

Representative George Cole

will lead the floor discussion on this measure.

Committee Report Review - Legislative Counsel

Date May 17, 1973

Joint Special

We have examined the report of the House Committee on Professional Responsibility,
dated May 17, 1973, on measure HB 2157 (Open REcords), and,
pursuant to House Rule 8.20(2), attest that the revised bill summary complies with the requirements of House
Rule 14.15(4) and that the identification of substantive changes in the report is accurate.

Kathleen Beaupre
For Legislative Counsel

☐ MEASURE HAS NO REVISED SUMMARY.

☐ MEASURE HAS NO SUBSTANTIVE CHANGES.

Loretta Hill
Committee Clerk Loretta Hill, (ext. 8893)

Enrolled

House Bill 2157

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST, MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS, WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS

CHAPTER.....

AN ACT

Relating to public disclosure by public bodies of public matters; creating new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015, 274.745, 522.510, 522.520, 547.120, 561.265, 573.350, 576.024, 576.395, 577.826, 578.190, 579.185 and 656.702; repealing ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 11 of this Act are added to and made a part of ORS chapter 192.

SECTION 2. As used in this 1973 Act:

(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

SECTION 3. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by section 11 of this 1973 Act.

SECTION 4. The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

SECTION 5. (1) The custodian of any public record which a person has a right to inspect shall give him, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available.

SECTION 6. (1) Subject to section 8 of this 1973 Act, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within three business days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency may institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

SECTION 7. Section 6 of this 1973 Act is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under subsection (3) of section 6 of this 1973 Act, unless he ordinarily serves as counsel for it.

SECTION 8. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in section 6 or 7 of this 1973 Act, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed.

SECTION 9. (1) In any suit filed under sections 6 to 8 of this 1973

closure under this 1973 Act unless the public interest requires disclosure in the particular instance:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(f) Information relating to the appraisal of real estate prior to its acquisition;

(g) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections; and

(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060.

(2) The following public records are exempt from disclosure under this 1973 Act:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear

and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050, 731.264 or 744.017; and

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(3) If any public record contains material which is not exempt under subsection (1), (2) or (4) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) (a) Upon application of any public body prior to convening of the 1975 regular session of the Legislative Assembly, the Governor may exempt any class of public records, in addition to the classes specified in subsection (1) of this section, from disclosure under this 1973 Act unless the public interest requires disclosure in the particular instance, if he finds that the class of public records for which exemption is sought is such that unlimited public access thereto would substantially prejudice or prevent the carrying out of any public function or purpose, so that the public interest in confidentiality of such records substantially outweighs the public interest in disclosure. Such exemption from disclosure shall be limited or conditioned to the extent the Governor finds appropriate.

(b) Prior to the granting of any exemption under this subsection the Governor shall hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(c) Any exemption granted under this subsection shall expire upon adjournment of the 1975 regular session of the Legislative Assembly.

Note: Section 12 was deleted by amendment.

Section 13. ORS 44.040, as amended by section 6, chapter 136, Oregon Laws 1973 (Enrolled House Bill 2101), is amended to read:

44.040. (1) There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

(a) A husband shall not be examined for or against his wife without her consent, or a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. The exception does not apply to a civil action, suit or proceeding, by one against the other, or to a criminal action or proceeding for a crime committed by one against the other.

(b) An attorney shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

(c) A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

(d) Subject to the provisions of sections 1 to 5 of [*this 1973 Act,*] **chapter —, Oregon Laws 1973 (Enrolled House Bill 2101)**, a regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action, suit or proceeding, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

(e) A public officer shall not be examined as to [*communications made to him in official confidence, when the public interest would suffer by the disclosure.*] **public records exempt from disclosure under this 1973 Act.**

(f) A stenographer shall not, without the consent of his or her employer, be examined as to any communication or dictation made by the employer to him or her in the course of professional employment.

(g) A licensed professional nurse shall not, without the consent of a patient who was cared for by such nurse, be examined in a civil action, suit or proceeding, as to any information acquired in caring for the patient, which was necessary to enable the nurse to care for the patient.

(h) A certified psychologist, as defined in ORS 675.010, shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon, in the course of his professional employment.

(i) A certificated staff member of an elementary or secondary school shall not be examined in any civil action, suit or proceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or his family, and which if disclosed would tend to damage or incriminate the student or his family. Any violation of the privilege provided by this section may result in the suspension of certification of the professional staff member as provided in ORS 342.175 to 342.185.

(2) If a party to the action, suit or proceeding offers himself as a witness, it is deemed a consent to the examination also of a wife, husband, attorney, clergyman, physician or surgeon, stenographer, licensed professional nurse, certified psychologist or certificated staff member on the same subject.

Section 14. ORS 59.680 is amended to read:

59.680. In addition to the filing of the bond required under ORS 59.670, every such person shall file with the Corporation Commissioner, on or before the 10th day of each month, a verified statement showing the total amount of money received by him on account of the sale of outstand-

ing and unredeemed shares theretofore issued by him and which were in force on the last day of the preceding month. This statement shall also set forth the name and address of every person who during the preceding month became a purchaser of any such share, together with the amount of money collected thereon and paid or to be paid therefor. *[The statement shall not be a public record, but shall be only for the information of the Corporation Commissioner and shall not be divulged by him or by anyone having access thereto except in court proceedings involving violation of ORS 59.670 or 59.680.]* At the time of filing this sworn statement, such person shall also deposit with the State Treasurer cash or securities specified as authorized investments for domestic insurance companies under the insurance laws of this state, in a sum at least equal in value, when added to the securities previously deposited by any such person with the State Treasurer, to 50 percent of the total amount theretofore received by such person on account of such shares. If at any time the securities so deposited are in excess of 50 percent of the amount received on account of the then outstanding and unredeemed shares such person may withdraw the excess, and the State Treasurer is directed to return the excess to the person depositing it. The securities so deposited shall be for the protection of all purchasers, or holders, of any such shares from the respective persons making the deposit, but a deposit by any such person hereunder shall be security only for the performance of his own contract as evidenced by the share sold and disposed of by him. The cash or securities, together with all accrued interest or dividends, shall be held and disposed of in the manner provided by law in respect to cash or securities deposited with the State Treasurer, and he shall be entitled to collect the fees authorized pursuant to state law pertaining to and regulating title insurance.

Section 15. ORS 146.780 is amended to read:

146.780. (1) Every medical investigator who receives a report under ORS 146.750 shall immediately report by telephone to the Chief Medical Investigator and shall record the details of the report on a form provided by the office of the Chief Medical Investigator and shall send a copy of the completed form to the Chief Medical Investigator.

(2) Notwithstanding the provisions of *[ORS 192.005 to 192.170]* sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility for public inspection of public records *[and public documents]*, records and reports compiled under the provisions of this section are confidential and are not accessible for public inspection.

Section 15a. If House Bill 2279 (1973 regular session) becomes law, on the effective date of chapter —, Oregon Laws 1973 (Enrolled House Bill 2279), section 15 of this Act is repealed and ORS 146.780 is amended to read:

146.780. Notwithstanding the provisions of *[ORS 192.005 to 192.170]* sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility for public inspection of public records *[and public documents]*, records and reports made under the provisions of ORS 146.750 are confidential and are not accessible for public inspection.

Section 16. ORS 181.540 is amended to read:

181.540. Notwithstanding the provisions of *[ORS 192.005 to 192.170]* sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility for public inspection of public records *[and public documents]*, fingerprints, photographs, records and reports compiled under the provisions of ORS 181.510 to 181.530 are confidential and are not accessible for public inspection except as provided in subsection (2) of ORS 181.065, or as ordered by a court.

Section 17. ORS 255.015 is amended to read:

255.015. *[(1) The provisions of ORS 192.005 to 192.170 notwithstanding,*

voters' pamphlet material shall be available to the public as provided in subsection (2) of this section.]

[(2)] After the 65th day prior to the date of the primary or general election the Secretary of State shall, upon request, make available to **any person** voters' pamphlet material filed pursuant to the provisions contained in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

Section 18. ORS 274.745 is amended to read:

274.745. (1) Records of drilling conducted by a permittee under ORS 274.740 shall be filed by the permittee with the State Department of Geology and Mineral Industries as prescribed by ORS 520.095. *[Such records shall be treated as confidential for a period of five years from the date of filing unless the permittee authorizes their earlier release.]*

(2) The division may require, as a condition to the issuance of any lease under ORS 274.705 to 274.860, that the lessee make available to the division, or the State Department of Geology and Mineral Industries, upon request, all factual and physical exploration results, logs and records resulting from the operations under the lease. *[Any such factual or physical exploration results, logs or records which the lessee is required to make available to the division and the department shall not be open to inspection by any other person or agency without the written consent of the lessee.]*

[(3) No member of the Department of Geology and Mineral Industries, officer or employe thereof, or any person performing any function or work assigned to him by the department, shall disclose to any person who is not a member, officer, employe of the department or to any person who is not performing any function or work assigned to him by the department, any information obtained from the inspection of such factual or physical exploration results, logs or records, or use such information for purposes other than the administration of the functions, responsibilities, and duties vested in the department by law, except upon the written consent of the permittee or lessee making such information available to the department.]

Note: Sections 19 through 23 were deleted by amendment.

Section 24. ORS 522.510 is amended to read:

522.510. (1) The owner or operator of any well shall keep, or cause to be kept, a careful and accurate log, core record and history of the drilling of the well.

(2) The log referred to in subsection (1) of this section shall show the character and depth of each formation encountered in the drilling of the well; the amount, size and weight of casing used; and the location, depth and temperature of water-bearing strata, including the temperature, chemical composition and other chemical and physical characteristics of fluid encountered from time to time.

(3) The core record referred to in subsection (1) of this section shall show the depth, character and fluid content of cores obtained, so far as determined from the study and analysis thereof.

(4) The history referred to in subsection (1) of this section shall show the location and amount of sidetracked casings, tools or other material; the depth and quantity of cement in cement plugs; the shots of dynamite or other explosives used; the results of production and other tests during drilling operations and completion data.

(5) The log referred to in subsections (1) and (2) of this section shall be kept in the local office of the owner or operator and, together with the tour reports of the owner or operator, shall be subject, during business hours, to inspection by the board, the supervisor or his authorized deputy [; except, any log kept with respect to a prospect well].

Section 25. ORS 522.520 is amended to read:

522.520. Each owner or operator of any well or **prospect well** or his

designated agent shall file with the supervisor a copy of the log, history and core record, or any portion thereof, **promptly upon completion, or upon the written request of the supervisor or his authorized deputy** at any time after the commencement, of the work of drilling any well [other than a] or prospect well [upon the written request of the supervisor or his authorized deputy] and upon the abandonment or upon suspension of operations conducted with respect to any well for a period of at least six months. The request shall be signed by the supervisor or the deputy and served upon such owner, operator or agent either personally or by mailing a copy of the request by [registered] certified mail to the last-known post-office address of such owner, operator or agent.

Section 26. ORS 561.265 is amended to read:

561.265. (1) The department upon not less than three days' notice in writing is authorized to inspect and audit, during regular business hours, necessary and applicable books and records of any person required by law to report or pay fees or moneys to the department. Such inspection is for the purpose of determining whether proper fees have been paid.

(2) "Fees" as used in this section includes fees due the department by a person, each month, year, or other fixed time or period, the amount of which is based upon the quantity, volume, weight or other measurement of some article, product or commodity and such fees to be used by the department in carrying out or enforcing a law under its jurisdiction. "Fees" does not include a license fee, the exact amount of which is fixed by law.

[(3) Information obtained by the department under the provisions of this section shall not be a public record.]

Section 27. ORS 573.350 is amended to read:

573.350. (1) Each person responsible for the payment of the fees required by ORS 573.340 shall file a report with the department on October 1, January 1, April 1 and July 1 of each year in which payment of the fees is required of the number of pounds of such herbicides sold, used or consumed during the three calendar months immediately preceding the date the report is due. The proper poundage fee shall be remitted with the report. The person required to file the report and pay the fee shall have a 15-day period of grace, immediately following the day the report and payment are due, to file the report and pay the fee.

(2) No user or consumer of such herbicides is required to file a report if the herbicides have been purchased from a manufacturer, jobber, broker or wholesaler who is responsible for the payment of the fee on poundage sold or from a retailer doing business in this state.

[(3) The report required by this section shall not be a public record; however, the board or the department may prepare and publish from its records such statistics and information as it deems advisable and which will not reveal any confidential information.]

SECTION 27a. If Senate Bill 106 (1973 regular session) becomes law, on the effective date of chapter —, Oregon Laws 1973 (Enrolled Senate Bill 106), section 27 of this Act is repealed.

Section 28. ORS 547.120 is amended to read:

547.120. The board of supervisors immediately after its election shall choose one of its number president of the board, and elect some suitable person secretary, who may or may not be a member of the board. The board shall adopt a seal with a suitable design, and shall keep a record of all its proceedings [, which shall be open to the inspection of all owners of real estate of the district, as well as to all other interested persons]. The board shall report to the landowners at the annual meeting held under the provision of ORS 547.110 what work has been done, either by the engineers or otherwise. Notwithstanding the provisions of ORS 198.190,

if the secretary is a member of the board he shall be entitled to compensation as provided for in ORS 547.125.

Section 29. ORS 576.024, as amended by section 19, chapter 174, Oregon Laws 1973 (Enrolled Senate Bill 476) is amended to read:

576.024. (1) It is necessary for the economy of this state, the livestock industry and the welfare of the consuming public that the department obtain statistical information for economic studies of the livestock industry including the volume of production of livestock in this state; the channels into which such livestock is marketed; the total consumption of meat in this state; the types and quantities consumed and the sources thereof; and such other information as is pertinent to reveal additional potential markets for livestock produced in this state.

(2) In order to carry out and maintain this continuing study, the department is authorized during business hours to inspect the records of places or businesses which handle, store or sell meat animals, or meat as defined in the applicable provisions of *[this 1973 Act]* **chapter 174, Oregon Laws 1973 (Enrolled Senate Bill 476)**. *[Such data and information shall not be a public record. The department however may release or use such data or information:]*

[(a) When necessary in preparation or publishing statistics as are necessary to carry out the purpose and intent of this section but which shall not reveal any confidential data or information of the identity of specific or particular places of business or establishments.]

[(b) When necessary in carrying out the responsibilities of the department under laws under its supervision and jurisdiction.]

(3) The department, after public hearing under ORS chapter 183, may require periodic reporting from the places or businesses described in this section and require the furnishing to the department of the data or information which may be needed in continuing the comprehensive study as authorized in this section.

Section 30. ORS 576.395 is amended to read:

576.395. *[(1)]* The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State.

[(2) The amount of assessment moneys paid to the commission and reports or information filed with the commission by a first purchaser or producer under ORS 576.051 to 576.584 are not a public record.]

Section 31. ORS 577.826 is amended to read:

577.826. (1) After a petition is received or a written request is received from the council as authorized by ORS 577.810, all persons eligible to vote may vote in the referendum provided they register with the department their names and such other pertinent information as is required. The department shall provide a period of not less than 20 days during which such persons may register. *[Only the names and addresses of the persons who register are public record.]* The department thereafter shall compile and file the list of persons eligible to vote, in the Salem office of the department and may publish such list as it deems necessary for the benefit of producers.

(2) Within 60 days after the list is filed, the department shall conduct the referendum.

Section 32. ORS 578.190 is amended to read:

578.190. *[(1)]* The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State.

[(2) The amount of assessment moneys paid to the commission and reports or information filed with the commission by a first purchaser or grower under this chapter are not a public record.]

Section 33. ORS 579.185 is amended to read:

579.185. [(1)] The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State.

[(2) *The amount of assessment moneys paid to the commission and reports or information filed with the commission by a first purchaser or grower under this chapter are not a public record.*]

Section 33a. ORS 656.702 is amended to read:

656.702. The records of the [board and the] State Accident Insurance Fund, excepting [payrolls and confidential reports] **employer account records and dividend schedules and formulas**, shall be open to public inspection. The accident experience records of the fund [for periods prior and subsequent to January 1, 1966,] shall be available to a bona fide rating organization to assist in making workmen's compensation rates providing any costs involved in making the records available shall be borne by the rating organization. Accident experience records of direct responsibility employers insuring with insurers issuing guaranty contracts under subsection (1) of ORS 656.405 shall also be available on the same terms to assist in making such rates.

SECTION 34. ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050 are repealed.

SECTION 35. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1973.



Corrected
RE-ENGROSSED
House Bill 2157

Ordered by the Senate June 23
(Including Amendments by Joint Special Committee on
Professional Responsibility May 17 and by Senate June 23)

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST,
MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS,
WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request
of the Attorney General)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney fees to successful applicants.

Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1 A BILL FOR AN ACT

2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, 522.510, 522.520, 547.120, 561.265, 573.350, 576.024, 576.395, 577.826,
5 578.190, 579.185 and 656.702; repealing ORS 128.700, 192.010, 192.020,
6 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017,
7 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050; and declaring an
8 emergency.

9 **Be It Enacted by the People of the State of Oregon:**

10 **SECTION 1.** Sections 2 to 11 of this Act are added to and made a part
11 of ORS chapter 192.

12 **SECTION 2.** As used in this 1973 Act:

13 (1) "Public body" includes every state officer, agency, department,
14 division, bureau, board and commission; every county and city governing
15 body, school district, special district, municipal corporation, and any board,
16 department, commission, council, or agency thereof; and any other public
17 agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

25 (5) "Writing" means handwriting, typewriting, printing, photostating,
26 photographing and every means of recording, including letters, words,
27 pictures, sounds, or symbols, or combination thereof, and all papers, maps,
28 magnetic or paper tapes, photographic films and prints, magnetic or punched
29 cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

33 **SECTION 4.** The custodian of any public records, unless otherwise
34 expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect shall give him, on demand, a certified copy of it,
9 if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy.

11 (2) The public body may establish fees reasonably calculated to re-
12 imburse it for its actual cost in making such records available.

13 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
14 denied the right to inspect or to receive a copy of any public record of a
15 state agency may petition the Attorney General to review the public record
16 to determine if it may be withheld from public inspection. The burden is
17 on the agency to sustain its action. The Attorney General shall issue his
18 order denying or granting the petition, or denying it in part and granting
19 it in part, within three business days from the day he receives the petition.

20 (2) If the Attorney General grants the petition and orders the state
21 agency to disclose the record, or if he grants the petition in part and
22 orders the state agency to disclose a portion of the record, the state agency
23 may institute proceedings for injunctive or declaratory relief in the Circuit
24 Court for Marion County. If the Attorney General denies the petition in
25 whole or in part, or if the state agency continues to withhold the record or
26 a part of it notwithstanding an order to disclose by the Attorney General,
27 the person seeking disclosure may institute such proceedings.

28 (3) The Attorney General shall serve as counsel for the state agency
29 in a suit filed under subsection (2) of this section if the suit arises out of
30 a determination by him that the public record should not be disclosed, or
31 that a part of the public record should not be disclosed if the state agency
32 has fully complied with his order requiring disclosure of another part or
33 parts of the public record, and in no other case. In any case in which the

1 Attorney General is prohibited from serving as counsel for the state agency,
2 the agency may retain special counsel.

3 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
4 case of a person denied the right to inspect or receive a copy of any public
5 record of a public body other than a state agency, except that in such case
6 the district attorney of the county in which the public body is located, or if
7 it is located in more than one county the district attorney of the county
8 in which the administrative offices of the public body are located, shall
9 carry out the functions of the Attorney General, and any suit filed shall be
10 filed in the circuit court for such county, and except that the district attor-
11 ney shall not serve as counsel for the public body, in the cases permitted
12 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
13 serves as counsel for it.

14 **SECTION 8.** In any case in which a person is denied the right to inspect
15 or to receive a copy of a public record in the custody of an elected official,
16 or in the custody of any other person but as to which an elected official
17 claims the right to withhold disclosure, no petition to require disclosure
18 may be filed with the Attorney General or district attorney, or if a petition
19 is filed it shall not be considered by the Attorney General or district attor-
20 ney after a claim of right to withhold disclosure by an elected official. In
21 such case a person denied the right to inspect or to receive a copy of a pub-
22 lic record may institute proceedings for injunctive or declaratory relief
23 in the appropriate circuit court, as specified in section 6 or 7 of this 1973
24 Act, and the Attorney General or district attorney may upon request serve
25 or decline to serve, in his discretion, as counsel in such suit for an elected
26 official for which he ordinarily serves as counsel. Nothing in this section
27 shall preclude an elected official from requesting advice from the Attorney
28 General or a district attorney as to whether a public record should be
29 disclosed.

30 **SECTION 9.** (1) In any suit filed under sections 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

1 court, on its own motion, may view the documents in controversy in
2 camera before reaching a decision. Any noncompliance with the order of
3 the court may be punished as contempt of court.

4 (2) Except as to causes the court considers of greater importance, pro-
5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
6 docket over all other causes and shall be assigned for hearing and trial at
7 the earliest practicable date and expedited in every way.

8 (3) If a person seeking the right to inspect or to receive a copy of a
9 public record prevails in such suit, he shall be awarded his reasonable
10 attorney fees. If such person prevails in part, the court may in its dis-
11 cretion award him his reasonable attorney fees, or an appropriate portion
12 thereof.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
14 torney requesting him to order a public record to be made available for
15 inspection or to be produced shall be in substantially the following form,
16 or in a form containing the same information:

17 _____

18

(date)

19 I (we), _____, the undersigned, request the
20 _____
(name(s))
21 Attorney General (or District Attorney of _____ County) to
22 order _____ and its employees to (make
(name of governmental body)
23 available for inspection) (produce a copy or copies of) the following records:

23 1. _____
(Name or description of record)

24 2. _____
(Name or description of record)

25 I (we) asked to inspect and/or copy these records on _____
(date)

26 at _____ The request was denied by the follow-
(address)
27 ing person(s):

28 1. _____
(Name of public officer or employee; title or position, if known)

29 2. _____
(Name of public officer or employee; title or position, if known)

30

(Signature(s))

31

32 This form should be delivered or mailed to the Attorney General's office
33 in Salem, or the district attorney's office in the county courthouse.

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 (a) Records of a public body pertaining to litigation to which the public
13 body is a party if the complaint has been filed, or if the complaint has not
14 been filed, if the public body shows that such litigation is reasonably
15 likely to occur. This exemption does not apply to litigation which has
16 been concluded, and nothing in this paragraph shall limit any right or
17 opportunity granted by discovery or deposition statutes to a party to
18 litigation or potential litigation;

19 (b) Trade secrets. "Trade secrets," as used in this section, may include,
20 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
21 compound, procedure, production data, or compilation of information which
22 is not patented, which is known only to certain individuals within a
23 commercial concern who are using it to fabricate, produce, or compound an
24 article of trade or a service or to locate minerals or other substances, having
25 commercial value, and which gives its user an opportunity to obtain a
26 business advantage over competitors who do not know or use it;

27 (c) Investigatory information compiled for criminal law purposes, ex-
28 cept that the record of an arrest or the report of a crime shall not be con-
29 fidential unless and only so long as there is a clear need in a particular case
30 to delay disclosure in the course of an investigation. Nothing in this para-
31 graph shall limit any right constitutionally guaranteed, or granted by
32 statute, to disclosure or discovery in criminal cases;

33 (d) Test questions, scoring keys, and other examination data used to
34 administer a licensing examination, examination for employment, or aca-

1 demic examination before the examination is given and if the examination
2 is to be used again;

3 (e) Information consisting of production records, sale or purchase
4 records or catch records, or similar business records of a private concern or
5 enterprise, required by law to be submitted to or inspected by a govern-
6 mental body to allow it to determine fees or assessments payable or to
7 establish production quotas, and the amounts of such fees or assessments
8 payable or paid, to the extent that such information is in a form
9 which would permit identification of the individual concern or enterprise.
10 Nothing in this paragraph shall limit the use which can be made of such
11 information for regulatory purposes or its admissibility in any enforcement
12 proceeding;

13 (f) Information relating to the appraisal of real estate prior to its
14 acquisition;

15 (g) The names and signatures of employees who sign authorization
16 cards or petitions for the purpose of requesting representation or decerti-
17 fication elections; and

18 (h) Investigatory information relating to any complaint filed under
19 ORS 659.040 or 659.045, until such time as the complaint is resolved under
20 ORS 659.050, or a final administrative determination is made under ORS
21 659.060.

22 (2) The following public records are exempt from disclosure under
23 this 1973 Act:

24 (a) Communications within a public body or between public bodies
25 of an advisory nature to the extent that they cover other than purely
26 factual materials and are preliminary to any final agency determination
27 of policy or action. This exemption shall not apply unless the public body
28 shows that in the particular instance the public interest in encouraging
29 frank communication between officials and employees of public bodies
30 clearly outweighs the public interest in disclosure;

31 (b) Information of a personal nature such as that kept in a personal,
32 medical or similar file, if the public disclosure thereof would constitute
33 an unreasonable invasion of privacy, unless the public interest by clear
34 and convincing evidence requires disclosure in the particular instance.

1 The party seeking disclosure shall have the burden of showing that public
2 disclosure would not constitute an unreasonable invasion of privacy;

3 (c) Information submitted to a public body in confidence and not
4 otherwise required by law to be submitted, where such information should
5 reasonably be considered confidential, the public body has obliged itself
6 in good faith not to disclose the information, and when the public interest
7 would suffer by the disclosure;

8 (d) Information or records of the Corrections Division, including the
9 State Board of Parole and Probation, to the extent that disclosure thereof
10 would interfere with the rehabilitation of a person in custody of the divi-
11 sion or substantially prejudice or prevent the carrying out of the functions
12 of the division, if the public interest in confidentiality clearly outweighs
13 the public interest in disclosure;

14 (e) Records, reports and other information received or compiled by
15 the Superintendent of Banks in his administration of ORS chapters 723,
16 724, 725 and 726, not otherwise required by law to be made public, to the
17 extent that the interests of lending institutions, their officers, employees
18 and customers in preserving the confidentiality of such information out-
19 weighs the public interest in disclosure;

20 (f) Reports made to or filed with the court under ORS 137.075 or
21 137.530;

22 (g) Any public records or information the disclosure of which is pro-
23 hibited by federal law or regulations;

24 (h) Public records or information the disclosure of which is prohibited
25 or restricted or otherwise made confidential or privileged under ORS
26 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540,
27 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065,
28 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430,
29 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050,
30 731.264 or 744.017; and

31 (i) Public records or information described in this section, furnished
32 by the public body originally compiling, preparing or receiving them to any
33 other public officer or public body in connection with performance of the
34 duties of the recipient, if the considerations originally giving rise to the

1 confidential or exempt nature of the public records or information remain
2 applicable.

3 (3) If any public record contains material which is not exempt under
4 subsection (1), (2) or (4) of this section, as well as material which is exempt
5 from disclosure, the public body shall separate the exempt and nonexempt
6 material and make the nonexempt material available for examination.

7 (4) (a) Upon application of any public body prior to convening of the
8 1975 regular session of the Legislative Assembly, the Governor may exempt
9 any class of public records, in addition to the classes specified in subsection
10 (1) of this section, from disclosure under this 1973 Act unless the public
11 interest requires disclosure in the particular instance, if he finds that the
12 class of public records for which exemption is sought is such that unlimited
13 public access thereto would substantially prejudice or prevent the carrying
14 out of any public function or purpose, so that the public interest in confi-
15 dentiality of such records substantially outweighs the public interest in
16 disclosure. Such exemption from disclosure shall be limited or conditioned
17 to the extent the Governor finds appropriate.

18 (b) Prior to the granting of any exemption under this subsection the
19 Governor shall hold a public hearing after notice as provided by ORS
20 183.335, or he may designate the Attorney General to hold the required
21 hearing.

22 (c) Any exemption granted under this subsection shall expire upon
23 adjournment of the 1975 regular session of the Legislative Assembly.

24 **Note:** Section 12 was deleted by amendment.

25 Section 13. ORS 44.040, as amended by section 6, chapter —, Oregon
26 Laws 1973 (Enrolled House Bill 2101), is amended to read:

27 44.040. (1) There are particular relations in which it is the policy of
28 the law to encourage confidence, and to preserve it inviolate; therefore a
29 person cannot be examined as a witness in the following cases:

30 (a) A husband shall not be examined for or against his wife without
31 her consent, or a wife for or against her husband without his consent; nor
32 can either, during the marriage or afterwards, be, without the consent of
33 the other, examined as to any communication made by one to the other dur-
34 ing the marriage. The exception does not apply to a civil action, suit or

1 proceeding, by one against the other, or to a criminal action, or proceeding
2 for a crime committed by one against the other.

3 (b) An attorney shall not, without the consent of his client, be examined
4 as to any communication made by the client to him, or his advice given
5 thereon, in the course of professional employment.

6 (c) A priest or clergyman shall not, without the consent of the person
7 making the confession, be examined as to any confession made to him in
8 his professional character, in the course of discipline enjoined by the
9 church to which he belongs.

10 (d) Subject to the provisions of sections 1 to 5 of [*this 1973 Act,*] chap-
11 ter —, Oregon Laws 1973 (Enrolled House Bill 2101) , a regular physician or
12 surgeon shall not, without the consent of his patient, be examined in a
13 civil action, suit or proceeding, as to any information acquired in attending
14 the patient, which was necessary to enable him to prescribe or act for the
15 patient.

16 (e) A public officer shall not be examined as to [*communications made*
17 *to him in official confidence, when the public interest would suffer by the*
18 *disclosure.*] public records exempt from disclosure under this 1973 Act.

19 (f) A stenographer shall not, without the consent of his or her
20 employer, be examined as to any communication or dictation made by
21 the employer to him or her in the course of professional employment.

22 (g) A licensed professional nurse shall not, without the consent
23 of a patient who was cared for by such nurse, be examined in a civil action,
24 suit or proceeding, as to any information acquired in caring for the patient,
25 which was necessary to enable the nurse to care for the patient.

26 (h) A certified psychologist, as defined in ORS 675.010, shall
27 not, without the consent of his client, be examined as to any communication
28 made by the client to him, or his advice given thereon, in the course of his
29 professional employment.

30 (i) A certificated staff member of an elementary or secondary school
31 shall not be examined in any civil action, suit or proceeding, as to
32 any conversation between the certificated staff member and a student
33 which relates to the personal affairs of the student or his family, and
34 which if disclosed would tend to damage or incriminate the student or

1 his family. Any violation of the privilege provided by this section may
2 result in the suspension of certification of the professional staff member
3 as provided in ORS 342.175 to 342.185.

4 (2) If a party to the action, suit or proceeding offers himself as a
5 witness, it is deemed a consent to the examination also of a wife, husband,
6 attorney, clergyman, physician or surgeon, stenographer, licensed profes-
7 sional nurse, certified psychologist or certificated staff member on the
8 same subject.

9 Section 14. ORS 59.680 is amended to read:

10 59.680. In addition to the filing of the bond required under ORS 59.670,
11 every such person shall file with the Corporation Commissioner, on or
12 before the 10th day of each month, a verified statement showing the
13 total amount of money received by him on account of the sale of outstand-
14 ing and unredeemed shares theretofore issued by him and which were in
15 force on the last day of the preceding month. This statement shall also set
16 forth the name and address of every person who during the preceding
17 month became a purchaser of any such share, together with the amount of
18 money collected thereon and paid or to be paid therefor. *[The statement*
19 *shall not be a public record, but shall be only for the information of the*
20 *Corporation Commissioner and shall not be divulged by him or by anyone*
21 *having access thereto except in court proceedings involving violation of*
22 *ORS 59.670 or 59.680.]* At the time of filing this sworn statement, such
23 person shall also deposit with the State Treasurer cash or securities speci-
24 fied as authorized investments for domestic insurance companies under the
25 insurance laws of this state, in a sum at least equal in value, when added
26 to the securities previously deposited by any such person with the State
27 Treasurer, to 50 percent of the total amount theretofore received by such
28 person on account of such shares. If at any time the securities so deposited
29 are in excess of 50 percent of the amount received on account of the then
30 outstanding and unredeemed shares such person may withdraw the excess,
31 and the State Treasurer is directed to return the excess to the person de-
32 positing it. The securities so deposited shall be for the protection of all
33 purchasers, or holders, of any such shares from the respective persons
34 making the deposit, but a deposit by any such person hereunder shall be

1 Section 18. ORS 274.745 is amended to read:

2 274.745. (1) Records of drilling conducted by a permittee under ORS
3 274.740 shall be filed by the permittee with the State Department of Geology
4 and Mineral Industries as prescribed by ORS 520.095. *[Such records shall be*
5 *treated as confidential for a period of five years from the date of filing*
6 *unless the permittee authorizes their earlier release.]*

7 (2) The division may require, as a condition to the issuance of any lease
8 under ORS 274.705 to 274.860, that the lessee make available to the division,
9 or the State Department of Geology and Mineral Industries, upon request,
10 all factual and physical exploration results, logs and records resulting from
11 the operations under the lease. *[Any such factual or physical exploration*
12 *results, logs or records which the lessee is required to make available to the*
13 *division and the department shall not be open to inspection by any other*
14 *person or agency without the written consent of the lessee.]*

15 [(3) No member of the Department of Geology and Mineral Industries,
16 officer or employe thereof, or any person performing any function or work
17 assigned to him by the department, shall disclose to any person who is not
18 a member, officer, employe of the department or to any person who is not
19 performing any function or work assigned to him by the department, any
20 information obtained from the inspection of such factual or physical explor-
21 ation results, logs or records, or use such information for purposes other
22 than the administration of the functions, responsibilities, and duties vested
23 in the department by law, except upon the written consent of the permittee
24 or lessee making such information available to the department.]

25 Note: Sections 19 through 23 were deleted by amendment.

26 Section 24. ORS 522.510 is amended to read:

27 522.510. (1) The owner or operator of any well shall keep, or cause
28 to be kept, a careful and accurate log, core record and history of the drill-
29 ing of the well.

30 (2) The log referred to in subsection (1) of this section shall show the
31 character and depth of each formation encountered in the drilling of the
32 well; the amount, size and weight of casing used; and the location, depth
33 and temperature of water-bearing strata, including the temperature, chemi-

1 cal composition and other chemical and physical characteristics of fluid
2 encountered from time to time.

3 (3) The core record referred to in subsection (1) of this section shall
4 show the depth, character and fluid content of cores obtained, so far as
5 determined from the study and analysis thereof.

6 (4) The history referred to in subsection (1) of this section shall show
7 the location and amount of sidetracked casings, tools or other material;
8 the depth and quantity of cement in cement plugs; the shots of dynamite
9 or other explosives used; the results of production and other tests during
10 drilling operations and completion data.

11 (5) The log referred to in subsections (1) and (2) of this section shall
12 be kept in the local office of the owner or operator and, together with the
13 tour reports of the owner or operator, shall be subject, during business
14 hours, to inspection by the board, the supervisor or his authorized deputy [;
15 *except, any log kept with respect to a prospect well*].

16 Section 25. ORS 522.520 is amended to read:

17 522.520. Each owner or operator of any well or **prospect well** or his
18 designated agent shall file with the supervisor a copy of the log, history
19 and core record, or any portion thereof, **promptly upon completion, or**
20 **upon the written request of the supervisor or his authorized deputy** at any
21 time after the commencement, of the work of drilling any well [*other*
22 *than a*] or prospect well [*upon the written request of the supervisor or*
23 *his authorized deputy*] **and upon the abandonment or upon suspension of**
24 **operations conducted with respect to any well for a period of at least six**
25 **months**. The request shall be signed by the supervisor or the deputy and
26 served **upon** such owner, operator or agent either personally or by mail-
27 ing a copy of the request by [*registered*] **certified** mail to the last-known
28 post-office address of such owner, operator or agent.

29 Section 26. ORS 561.265 is amended to read:

30 561.265. (1) The department upon not less than three days' notice in
31 writing is authorized to inspect and audit, during regular business hours,
32 necessary and applicable books and records of any person required by law
33 to report or pay fees or moneys to the department. Such inspection is for
34 the purpose of determining whether proper fees have been paid.

1 (2) "Fees" as used in this section includes fees due the department
2 by a person, each month, year, or other fixed time or period, the amount
3 of which is based upon the quantity, volume, weight or other measurement
4 of some article, product or commodity and such fees to be used by the
5 department in carrying out or enforcing a law under its jurisdiction. "Fees"
6 does not include a license fee, the exact amount of which is fixed by law.

7 *[(3) Information obtained by the department under the provisions of*
8 *this section shall not be a public record.]*

9 Section 27. ORS 573.350 is amended to read:

10 573.350. (1) Each person responsible for the payment of the fees
11 required by ORS 573.340 shall file a report with the department on October
12 1, January 1, April 1 and July 1 of each year in which payment of the
13 fees is required of the number of pounds of such herbicides sold, used or
14 consumed during the three calendar months immediately preceding the
15 date the report is due. The proper poundage fee shall be remitted with the
16 report. The person required to file the report and pay the fee shall have
17 a 15-day period of grace, immediately following the day the report and
18 payment are due, to file the report and pay the fee.

19 (2) No user or consumer of such herbicides is required to file a report
20 if the herbicides have been purchased from a manufacturer, jobber, broker
21 or wholesaler who is responsible for the payment of the fee on poundage
22 sold or from a retailer doing business in this state.

23 *[(3) The report required by this section shall not be a public record;*
24 *however, the board or the department may prepare and publish from its*
25 *records such statistics and information as it deems advisable and which*
26 *will not reveal any confidential information.]*

27 **SECTION 27a.** If Senate Bill 106 (1973 regular session) becomes law,
28 on the effective date of chapter —, Oregon Laws 1973 (Enrolled Senate
29 Bill 106), section 27 of this Act is repealed.

30 Section 28. ORS 547.120 is amended to read:

31 547.120. The board of supervisors immediately after its election shall
32 choose one of its number president of the board, and elect some suitable
33 person secretary, who may or may not be a member of the board. The
34 board shall adopt a seal with a suitable design, and shall keep a record of all

1 its proceedings [, *which shall be open to the inspection of all owners of*
2 *real estate of the district, as well as to all other interested persons*]. The
3 board shall report to the landowners at the annual meeting held under
4 the provision of ORS 547.110 what work has been done, either by the
5 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
6 if the secretary is a member of the board he shall be entitled to compen-
7 sation as provided for in ORS 547.125.

8 Section 29. ORS 576.024 is amended to read:

9 576.024. (1) It is necessary for the economy of this state, the livestock
10 industry and the welfare of the consuming public that the department ob-
11 tain statistical information for economic studies of the livestock industry
12 including the volume of production of livestock in this state; the chan-
13 nels into which such livestock is marketed; the total consumption of meat
14 in this state; the types and quantities consumed and the sources thereof;
15 and such other information as is pertinent to reveal additional potential
16 markets for livestock produced in this state.

17 (2) In order to carry out and maintain this continuing study, the de-
18 partment is authorized during business hours to inspect the records of
19 places or businesses which handle, store or sell meat animals, or meat as
20 defined in ORS 619.610. [*Such data and information shall not be a public*
21 *record. The department however may release or use such data or informa-*
22 *tion.*]

23 [(a) *When necessary in preparation or publishing statistics as are*
24 *necessary to carry out the purpose and intent of this section but which*
25 *shall not reveal any confidential data or information of the identity of*
26 *specific or particular places of business or establishments.*]

27 [(b) *When necessary in carrying out the responsibilities of the de-*
28 *partment under laws under its supervision and jurisdiction.*]

29 (3) The department, after public hearing under ORS chapter 183, may
30 require periodic reporting from the places or businesses described in this
31 section and require the furnishing to the department of the data or infor-
32 mation which may be needed in continuing the comprehensive study as
33 authorized in this section.

1 Section 30. ORS 576.395 is amended to read:

2 576.395. [(1)] The commission shall keep accurate books, records and
3 accounts of all its dealings which shall be open to inspection and audit by
4 the Secretary of State.

5 [(2) *The amount of assessment moneys paid to the commission and*
6 *reports or information filed with the commission by a first purchaser or*
7 *producer under ORS 576.051 to 576.584 are not a public record.*]

8 Section 31. ORS 577.826 is amended to read:

9 577.826. (1) After a petition is received or a written request is re-
10 ceived from the council as authorized by ORS 577.810, all persons eligible to
11 vote may vote in the referendum provided they register with the depart-
12 ment their names and such other pertinent information as is required.
13 The department shall provide a period of not less than 20 days during
14 which such persons may register. [*Only the names and addresses of the*
15 *persons who register are public record.*] The department thereafter shall
16 compile and file the list of persons eligible to vote, in the Salem office of
17 the department and may publish such list as it deems necessary for the
18 benefit of producers.

19 (2) Within 60 days after the list is filed, the department shall conduct
20 the referendum.

21 Section 32. ORS 578.190 is amended to read:

22 578.190. [(1)] The commission shall keep accurate books, records and
23 accounts of all its dealings which shall be open to inspection and audit by
24 the Secretary of State.

25 [(2) *The amount of assessment moneys paid to the commission and*
26 *reports or information filed with the commission by a first purchaser or*
27 *grower under this chapter are not a public record.*]

28 Section 33. ORS 579.185 is amended to read:

29 579.185. [(1)] The commission shall keep accurate books, records and
30 accounts of all its dealings which shall be open to inspection and audit
31 by the Secretary of State.

32 [(2) *The amount of assessment moneys paid to the commission and*
33 *reports or information filed with the commission by a first purchaser or*
34 *grower under this chapter are not a public record.*]

1 Section 33a. ORS 656.702 is amended to read:

2 656.702. The records of the [*board and the*] State Accident Insurance
3 Fund, excepting [*payrolls and confidential reports*] **employer account rec-**
4 **ords and dividend schedules and formulas**, shall be open to public inspec-
5 tion. The accident experience records of the fund [*for periods prior and*
6 *subsequent to January 1, 1966,*] shall be available to a bona fide rating
7 organization to assist in making workmen's compensation rates providing
8 any costs involved in making the records available shall be borne by the
9 rating organization. Accident experience records of direct responsibility
10 employers insuring with insurers issuing guaranty contracts under sub-
11 section (1) of ORS 656.405 shall also be available on the same terms to
12 assist in making such rates.

13 **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
14 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580,
15 697.220, 697.725 and 721.050 are repealed.

16 **SECTION 35.** This Act being necessary for the immediate preservation
17 of the public peace, health and safety, an emergency is declared to exist,
18 and this Act takes effect July 1, 1973.

ENROLLED
Corrected

RE-ENGROSSED

House Bill 2157

Ordered by the Senate June 23
(Including Amendments by Joint Special Committee on
Professional Responsibility May 17 and by Senate June 23)

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST,
MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS,
WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request
of the Attorney General)

CHAPTER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney fees to successful applicants.

Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1
2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, 522.510, 522.520, 547.120, 561.265, 573.350, 576.024, 576.395, 577.826,
5 578.190, 579.185 and 656.702; repealing ORS 128.700, 192.010, 192.020,
6 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017,
7 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050; and declaring an
8 emergency.

9 **Be It Enacted by the People of the State of Oregon:**

10 **SECTION 1.** Sections 2 to 11 of this Act are added to and made a part
11 of ORS chapter 192.

12 **SECTION 2.** As used in this 1973 Act:

13 (1) "Public body" includes every state officer, agency, department,
14 division, bureau, board and commission; every county and city governing
15 body, school district, special district, municipal corporation, and any board,
16 department, commission, council, or agency thereof; and any other public
17 agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

25 (5) "Writing" means handwriting, typewriting, printing, photostating,
26 photographing and every means of recording, including letters, words,
27 pictures, sounds, or symbols, or combination thereof, and all papers, maps,
28 magnetic or paper tapes, photographic films and prints, magnetic or punched
29 cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

33 **SECTION 4.** The custodian of any public records, unless otherwise
34 expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect shall give him, on demand, a certified copy of it,
9 if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy.

11 (2) The public body may establish fees reasonably calculated to re-
12 imburse it for its actual cost in making such records available.

13 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
14 denied the right to inspect or to receive a copy of any public record of a
15 state agency may petition the Attorney General to review the public record
16 to determine if it may be withheld from public inspection. The burden is
17 on the agency to sustain its action. The Attorney General shall issue his
18 order denying or granting the petition, or denying it in part and granting
19 it in part, within three business days from the day he receives the petition.

20 (2) If the Attorney General grants the petition and orders the state
21 agency to disclose the record, or if he grants the petition in part and
22 orders the state agency to disclose a portion of the record, the state agency
23 may institute proceedings for injunctive or declaratory relief in the Circuit
24 Court for Marion County. If the Attorney General denies the petition in
25 whole or in part, or if the state agency continues to withhold the record or
26 a part of it notwithstanding an order to disclose by the Attorney General,
27 the person seeking disclosure may institute such proceedings.

28 (3) The Attorney General shall serve as counsel for the state agency
29 in a suit filed under subsection (2) of this section if the suit arises out of
30 a determination by him that the public record should not be disclosed, or
31 that a part of the public record should not be disclosed if the state agency
32 has fully complied with his order requiring disclosure of another part or
33 parts of the public record, and in no other case. In any case in which the

1 Attorney General is prohibited from serving as counsel for the state agency,
2 the agency may retain special counsel.

3 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
4 case of a person denied the right to inspect or receive a copy of any public
5 record of a public body other than a state agency, except that in such case
6 the district attorney of the county in which the public body is located, or if
7 it is located in more than one county the district attorney of the county
8 in which the administrative offices of the public body are located, shall
9 carry out the functions of the Attorney General, and any suit filed shall be
10 filed in the circuit court for such county, and except that the district attor-
11 ney shall not serve as counsel for the public body, in the cases permitted
12 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
13 serves as counsel for it.

14 **SECTION 8.** In any case in which a person is denied the right to inspect
15 or to receive a copy of a public record in the custody of an elected official,
16 or in the custody of any other person but as to which an elected official
17 claims the right to withhold disclosure, no petition to require disclosure
18 may be filed with the Attorney General or district attorney, or if a petition
19 is filed it shall not be considered by the Attorney General or district attor-
20 ney after a claim of right to withhold disclosure by an elected official. In
21 such case a person denied the right to inspect or to receive a copy of a pub-
22 lic record may institute proceedings for injunctive or declaratory relief
23 in the appropriate circuit court, as specified in section 6 or 7 of this 1973
24 Act, and the Attorney General or district attorney may upon request serve
25 or decline to serve, in his discretion, as counsel in such suit for an elected
26 official for which he ordinarily serves as counsel. Nothing in this section
27 shall preclude an elected official from requesting advice from the Attorney
28 General or a district attorney as to whether a public record should be
29 disclosed.

30 **SECTION 9.** (1) In any suit filed under sections 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

4 (2) Except as to causes the court considers of greater importance, pro-
5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
6 docket over all other causes and shall be assigned for hearing and trial at
7 the earliest practicable date and expedited in every way.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
14 torney requesting him to order a public record to be made available for
15 inspection or to be produced shall be in substantially the following form,
16 or in a form containing the same information:

18 _____ (date)

19 I (we), _____, the undersigned, request the

20 _____ (name(s))

20 Attorney General (or District Attorney of _____ County) to

21 order _____ and its employees to (make

21 _____ (name of governmental body)

22 available for inspection) (produce a copy or copies of) the following records:

24 2. _____
(Name or description of record)

25 I (we) asked to inspect and/or copy these records on _____ (date)
26 at _____. The request was denied by the follow-
27 ing person(s):

29 2. _____
(Name of public officer or employee; title or position, if known)

(Signature(s))

32 This form should be delivered or mailed to the Attorney General's office
33 in Salem, or the district attorney's office in the county courthouse.

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 (a) Records of a public body pertaining to litigation to which the public
13 body is a party if the complaint has been filed, or if the complaint has not
14 been filed, if the public body shows that such litigation is reasonably
15 likely to occur. This exemption does not apply to litigation which has
16 been concluded, and nothing in this paragraph shall limit any right or
17 opportunity granted by discovery or deposition statutes to a party to
18 litigation or potential litigation;

19 (b) Trade secrets. "Trade secrets," as used in this section, may include,
20 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
21 compound, procedure, production data, or compilation of information which
22 is not patented, which is known only to certain individuals within a
23 commercial concern who are using it to fabricate, produce, or compound an
24 article of trade or a service or to locate minerals or other substances, having
25 commercial value, and which gives its user an opportunity to obtain a
26 business advantage over competitors who do not know or use it;

27 (c) Investigatory information compiled for criminal law purposes, ex-
28 cept that the record of an arrest or the report of a crime shall not be con-
29 fidential unless and only so long as there is a clear need in a particular case
30 to delay disclosure in the course of an investigation. Nothing in this para-
31 graph shall limit any right constitutionally guaranteed, or granted by
32 statute, to disclosure or discovery in criminal cases;

33 (d) Test questions, scoring keys, and other examination data used to
34 administer a licensing examination, examination for employment, or aca-

1 demic examination before the examination is given and if the examination
2 is to be used again;

3 (e) Information consisting of production records, sale or purchase
4 records or catch records, or similar business records of a private concern or
5 enterprise, required by law to be submitted to or inspected by a govern-
6 mental body to allow it to determine fees or assessments payable or to
7 establish production quotas, and the amounts of such fees or assessments
8 payable or paid, to the extent that such information is in a form
9 which would permit identification of the individual concern or enterprise.
10 Nothing in this paragraph shall limit the use which can be made of such
11 information for regulatory purposes or its admissibility in any enforcement
12 proceeding;

13 (f) Information relating to the appraisal of real estate prior to its
14 acquisition;

15 (g) The names and signatures of employees who sign authorization
16 cards or petitions for the purpose of requesting representation or decerti-
17 fication elections; and

18 (h) Investigatory information relating to any complaint filed under
19 ORS 659.040 or 659.045, until such time as the complaint is resolved under
20 ORS 659.050, or a final administrative determination is made under ORS
21 659.060.

22 (2) The following public records are exempt from disclosure under
23 this 1973 Act:

24 (a) Communications within a public body or between public bodies
25 of an advisory nature to the extent that they cover other than purely
26 factual materials and are preliminary to any final agency determination
27 of policy or action. This exemption shall not apply unless the public body
28 shows that in the particular instance the public interest in encouraging
29 frank communication between officials and employees of public bodies
30 clearly outweighs the public interest in disclosure;

31 (b) Information of a personal nature such as that kept in a personal,
32 medical or similar file, if the public disclosure thereof would constitute
33 an unreasonable invasion of privacy, unless the public interest by clear
34 and convincing evidence requires disclosure in the particular instance.

1 The party seeking disclosure shall have the burden of showing that public
2 disclosure would not constitute an unreasonable invasion of privacy;

3 (c) Information submitted to a public body in confidence and not
4 otherwise required by law to be submitted, where such information should
5 reasonably be considered confidential, the public body has obliged itself
6 in good faith not to disclose the information, and when the public interest
7 would suffer by the disclosure;

8 (d) Information or records of the Corrections Division, including the
9 State Board of Parole and Probation, to the extent that disclosure thereof
10 would interfere with the rehabilitation of a person in custody of the divi-
11 sion or substantially prejudice or prevent the carrying out of the functions
12 of the division, if the public interest in confidentiality clearly outweighs
13 the public interest in disclosure;

14 (e) Records, reports and other information received or compiled by
15 the Superintendent of Banks in his administration of ORS chapters 723,
16 724, 725 and 726, not otherwise required by law to be made public, to the
17 extent that the interests of lending institutions, their officers, employes
18 and customers in preserving the confidentiality of such information out-
19 weighs the public interest in disclosure;

20 (f) Reports made to or filed with the court under ORS 137.075 or
21 137.530;

22 (g) Any public records or information the disclosure of which is pro-
23 hibited by federal law or regulations;

24 (h) Public records or information the disclosure of which is prohibited
25 or restricted or otherwise made confidential or privileged under ORS
26 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540,
27 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065,
28 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430,
29 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050,
30 731.264 or 744.017; and

31 (i) Public records or information described in this section, furnished
32 by the public body originally compiling, preparing or receiving them to any
33 other public officer or public body in connection with performance of the
34 duties of the recipient, if the considerations originally giving rise to the

1 confidential or exempt nature of the public records or information remain
2 applicable.

3 (3) If any public record contains material which is not exempt under
4 subsection (1), (2) or (4) of this section, as well as material which is exempt
5 from disclosure, the public body shall separate the exempt and nonexempt
6 material and make the nonexempt material available for examination.

7 (4) (a) Upon application of any public body prior to convening of the
8 1975 regular session of the Legislative Assembly, the Governor may exempt
9 any class of public records, in addition to the classes specified in subsection
10 (1) of this section, from disclosure under this 1973 Act unless the public
11 interest requires disclosure in the particular instance, if he finds that the
12 class of public records for which exemption is sought is such that unlimited
13 public access thereto would substantially prejudice or prevent the carrying
14 out of any public function or purpose, so that the public interest in confi-
15 dentiality of such records substantially outweighs the public interest in
16 disclosure. Such exemption from disclosure shall be limited or conditioned
17 to the extent the Governor finds appropriate.

18 (b) Prior to the granting of any exemption under this subsection the
19 Governor shall hold a public hearing after notice as provided by ORS
20 183.335, or he may designate the Attorney General to hold the required
21 hearing.

22 (c) Any exemption granted under this subsection shall expire upon
23 adjournment of the 1975 regular session of the Legislative Assembly.

24 **Note:** Section 12 was deleted by amendment.

25 Section 13. ORS 44.040, as amended by section 6, chapter ¹³⁶~~135~~, Oregon
26 Laws 1973 (Enrolled House Bill 2101), is amended to read:

27 44.040. (1) There are particular relations in which it is the policy of
28 the law to encourage confidence, and to preserve it inviolate; therefore a
29 person cannot be examined as a witness in the following cases:

30 (a) A husband shall not be examined for or against his wife without
31 her consent, or a wife for or against her husband without his consent; nor
32 can either, during the marriage or afterwards, be, without the consent of
33 the other, examined as to any communication made by one to the other dur-
34 ing the marriage. The exception does not apply to a civil action, suit or

1 proceeding, by one against the other, or to a criminal action or proceeding
2 for a crime committed by one against the other.

3 (b) An attorney shall not, without the consent of his client, be examined
4 as to any communication made by the client to him, or his advice given
5 thereon, in the course of professional employment.

6 (c) A priest or clergyman shall not, without the consent of the person
7 making the confession, be examined as to any confession made to him in
8 his professional character, in the course of discipline enjoined by the
9 church to which he belongs.

10 (d) Subject to the provisions of sections 1 to 5 of [*this 1973 Act,*] chap-
11 ¹³⁶~~ter~~, **Oregon Laws 1973 (Enrolled House Bill 2101)**, a regular physician or
12 surgeon shall not, without the consent of his patient, be examined in a
13 civil action, suit or proceeding, as to any information acquired in attending
14 the patient, which was necessary to enable him to prescribe or act for the
15 patient.

16 (e) A public officer shall not be examined as to [*communications made*
17 *to him in official confidence, when the public interest would suffer by the*
18 *disclosure.*] **public records exempt from disclosure under this 1973 Act.**

19 (f) A stenographer shall not, without the consent of his or her
20 employer, be examined as to any communication or dictation made by
21 the employer to him or her in the course of professional employment.

22 (g) A licensed professional nurse shall not, without the consent
23 of a patient who was cared for by such nurse, be examined in a civil action,
24 suit or proceeding, as to any information acquired in caring for the patient,
25 which was necessary to enable the nurse to care for the patient.

26 (h) A certified psychologist, as defined in ORS 675.010, shall
27 not, without the consent of his client, be examined as to any communication
28 made by the client to him, or his advice given thereon, in the course of his
29 professional employment.

30 (i) A certificated staff member of an elementary or secondary school
31 shall not be examined in any civil action, suit or proceeding, as to
32 any conversation between the certificated staff member and a student
33 which relates to the personal affairs of the student or his family, and
34 which if disclosed would tend to damage or incriminate the student or

1 his family. Any violation of the privilege provided by this section may
2 result in the suspension of certification of the ~~professional~~ ^{public} staff member
3 as provided in ORS 342.175 to 342.185.

4 (2) If a party to the action, suit or proceeding offers himself as a
5 witness, it is deemed a consent to the examination also of a wife, husband,
6 attorney, clergyman, physician or surgeon, stenographer, licensed profes-
7 sional nurse, certified psychologist or certificated staff member on the
8 same subject.

9 Section 14. ORS 59.680 is amended to read:

10 59.680. In addition to the filing of the bond required under ORS 59.670,
11 every such person shall file with the Corporation Commissioner, on or
12 before the 10th day of each month, a verified statement showing the
13 total amount of money received by him on account of the sale of outstand-
14 ing and unredeemed shares theretofore issued by him and which were in
15 force on the last day of the preceding month. This statement shall also set
16 forth the name and address of every person who during the preceding
17 month became a purchaser of any such share, together with the amount of
18 money collected thereon and paid or to be paid therefor. *[The statement*
19 *shall not be a public record, but shall be only for the information of the*
20 *Corporation Commissioner and shall not be divulged by him or by anyone*
21 *having access thereto except in court proceedings involving violation of*
22 *ORS 59.670 or 59.680.]* At the time of filing this sworn statement, such
23 person shall also deposit with the State Treasurer cash or securities speci-
24 fied as authorized investments for domestic insurance companies under the
25 insurance laws of this state, in a sum at least equal in value, when added
26 to the securities previously deposited by any such person with the State
27 Treasurer, to 50 percent of the total amount theretofore received by such
28 person on account of such shares. If at any time the securities so deposited
29 are in excess of 50 percent of the amount received on account of the then
30 outstanding and unredeemed shares such person may withdraw the excess,
31 and the State Treasurer is directed to return the excess to the person de-
32 positing it. The securities so deposited shall be for the protection of all
33 purchasers, or holders, of any such shares from the respective persons
34 making the deposit, but a deposit by any such person hereunder shall be

1 security only for the performance of his own contract as evidenced by
2 the share sold and disposed of by him. The cash or securities, together with
3 all accrued interest or dividends, shall be held and disposed of in the
4 manner provided by law in respect to cash or securities deposited with the
5 State Treasurer, and he shall be entitled to collect the fees authorized
6 pursuant to state law pertaining to and regulating title insurance.

7 Section 15. ORS 146.780 is amended to read:

8 146.780. (1) Every medical investigator who receives a report under
9 ORS 146.750 shall immediately report by telephone to the Chief Medical
10 Investigator and shall record the details of the report on a form provided
11 by the office of the Chief Medical Investigator and shall send a copy of
12 the completed form to the Chief Medical Investigator.

13 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
14 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-
15 lic inspection of public records [and public documents], records and reports
16 compiled under the provisions of this section are confidential and are not
17 accessible for public inspection.

Insert 1
① "Section 15a. If House Bill 2279 (1973 regular session)
becomes law, on the effective date of chapter ___, Oregon
Laws 1973 (Enrolled House Bill 2279), section 15 of this Act
is repealed and ORS 146.780 is amended to read:

"146.780. Notwithstanding the provisions of [ORS
192.005 to 192.170] sections 2 to 11 of this 1973 Act
relating to confidentiality and accessibility for
public inspection of public records [and public documents],
records and reports made under ^{the} provisions of ORS 146.750
are confidential and are not accessible for public
inspection."

31 election the Secretary of State shall, upon request, make available to any
32 person voters' pamphlet material filed pursuant to the provisions contained
33 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

1 security only for the performance of his own contract as evidenced by
2 the share sold and disposed of by him. The cash or securities, together with
3 all accrued interest or dividends, shall be held and disposed of in the
4 manner provided by law in respect to cash or securities deposited with the
5 State Treasurer, and he shall be entitled to collect the fees authorized
6 pursuant to state law pertaining to and regulating title insurance.

7 Section 15. ORS 146.780 is amended to read:

8 146.780. (1) Every medical investigator who receives a report under
9 ORS 146.750 shall immediately report by telephone to the Chief Medical
10 Investigator and shall record the details of the report on a form provided
11 by the office of the Chief Medical Investigator and shall send a copy of
12 the completed form to the Chief Medical Investigator.

13 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
14 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-
15 lic inspection of public records [and public documents], records and reports
16 compiled under the provisions of this section are confidential and are not
17 accessible for public inspection.

18 Section 16. ORS 181.540 is amended to read:

19 181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170]
20 sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility
21 for public inspection of public records [and public documents], finger-
22 prints, photographs, records and reports compiled under the provisions of
23 ORS 181.510 to 181.530 are confidential and are not accessible for public
24 inspection except as provided in subsection (2) of ORS 181.065, or as ordered
25 by a court.

26 Section 17. ORS 255.015 is amended to read:

27 255.015. [(1) The provisions of ORS 192.005 to 192.170 notwithstanding,
28 voters' pamphlet material shall be available to the public as provided in
29 subsection (2) of this section.]

30 [(2)] After the 65th day prior to the date of the primary or general
31 election the Secretary of State shall, upon request, make available to any
32 person voters' pamphlet material filed pursuant to the provisions contained
33 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

1 Section 18. ORS 274.745 is amended to read:

2 274.745. (1) Records of drilling conducted by a permittee under ORS
3 274.740 shall be filed by the permittee with the State Department of Geology
4 and Mineral Industries as prescribed by ORS 520.095. [*Such records shall be*
5 *treated as confidential for a period of five years from the date of filing*
6 *unless the permittee authorizes their earlier release.*]

7 (2) The division may require, as a condition to the issuance of any lease
8 under ORS 274.705 to 274.860, that the lessee make available to the division,
9 or the State Department of Geology and Mineral Industries, upon request,
10 all factual and physical exploration results, logs and records resulting from
11 the operations under the lease. [*Any such factual or physical exploration*
12 *results, logs or records which the lessee is required to make available to the*
13 *division and the department shall not be open to inspection by any other*
14 *person or agency without the written consent of the lessee.*]

15 [(3) No member of the Department of Geology and Mineral Industries,
16 officer or employe thereof, or any person performing any function or work
17 assigned to him by the department, shall disclose to any person who is not
18 a member, officer, employe of the department or to any person who is not
19 performing any function or work assigned to him by the department, any
20 information obtained from the inspection of such factual or physical explor-
21 ation results, logs or records, or use such information for purposes other
22 than the administration of the functions, responsibilities, and duties vested
23 in the department by law, except upon the written consent of the permittee
24 or lessee making such information available to the department.]

25 Note: Sections 19 through 23 were deleted by amendment.

26 Section 24. ORS 522.510 is amended to read:

27 522.510. (1) The owner or operator of any well shall keep, or cause
28 to be kept, a careful and accurate log, core record and history of the drill-
29 ing of the well.

30 (2) The log referred to in subsection (1) of this section shall show the
31 character and depth of each formation encountered in the drilling of the
32 well; the amount, size and weight of casing used; and the location, depth
33 and temperature of water-bearing strata, including the temperature, chemi-

1 cal composition and other chemical and physical characteristics of fluid
2 encountered from time to time.

3 (3) The core record referred to in subsection (1) of this section shall
4 show the depth, character and fluid content of cores obtained, so far as
5 determined from the study and analysis thereof.

6 (4) The history referred to in subsection (1) of this section shall show
7 the location and amount of sidetracked casings, tools or other material;
8 the depth and quantity of cement in cement plugs; the shots of dynamite
9 or other explosives used; the results of production and other tests during
10 drilling operations and completion data.

11 (5) The log referred to in subsections (1) and (2) of this section shall
12 be kept in the local office of the owner or operator and, together with the
13 tour reports of the owner or operator, shall be subject, during business
14 hours, to inspection by the board, the supervisor or his authorized deputy [;
15 *except, any log kept with respect to a prospect well*].

16 Section 25. ORS 522.520 is amended to read:

17 522.520. Each owner or operator of any well or **prospect well** or his
18 designated agent shall file with the supervisor a copy of the log, history
19 and core record, or any portion thereof, **promptly upon completion, or**
20 **upon the written request of the supervisor or his authorized deputy** at any
21 time after the commencement, of the work of drilling any well [*other*
22 *than a*] or prospect well [*upon the written request of the supervisor or*
23 *his authorized deputy*] and **upon the abandonment or upon suspension of**
24 **operations conducted with respect to any well for a period of at least six**
25 **months**. The request shall be signed by the supervisor or the deputy and
26 served **upon** such owner, operator or agent either personally or by mail-
27 ing a copy of the request by [*registered*] **certified** mail to the last-known
28 post-office address of such owner, operator or agent.

29 Section 26. ORS 561.265 is amended to read:

30 561.265. (1) The department upon not less than three days' notice in
31 writing is authorized to inspect and audit, during regular business hours,
32 necessary and applicable books and records of any person required by law
33 to report or pay fees or moneys to the department. Such inspection is for
34 the purpose of determining whether proper fees have been paid.

1 (2) "Fees" as used in this section includes fees due the department
2 by a person, each month, year, or other fixed time or period, the amount
3 of which is based upon the quantity, volume, weight or other measurement
4 of some article, product or commodity and such fees to be used by the
5 department in carrying out or enforcing a law under its jurisdiction. "Fees"
6 does not include a license fee, the exact amount of which is fixed by law.

7 *[(3) Information obtained by the department under the provisions of*
8 *this section shall not be a public record.]*

9 Section 27. ORS 573.350 is amended to read:

10 573.350. (1) Each person responsible for the payment of the fees
11 required by ORS 573.340 shall file a report with the department on October
12 1, January 1, April 1 and July 1 of each year in which payment of the
13 fees is required of the number of pounds of such herbicides sold, used or
14 consumed during the three calendar months immediately preceding the
15 date the report is due. The proper poundage fee shall be remitted with the
16 report. The person required to file the report and pay the fee shall have
17 a 15-day period of grace, immediately following the day the report and
18 payment are due, to file the report and pay the fee.

19 (2) No user or consumer of such herbicides is required to file a report
20 if the herbicides have been purchased from a manufacturer, jobber, broker
21 or wholesaler who is responsible for the payment of the fee on poundage
22 sold or from a retailer doing business in this state.

23 *[(3) The report required by this section shall not be a public record;*
24 *however, the board or the department may prepare and publish from its*
25 *records such statistics and information as it deems advisable and which*
26 *will not reveal any confidential information.]*

27 **SECTION 27a.** If Senate Bill 106 (1973 regular session) becomes law,
28 on the effective date of chapter —, Oregon Laws 1973 (Enrolled Senate
29 Bill 106), section 27 of this Act is repealed.

30 Section 28. ORS 547.120 is amended to read:

31 547.120. The board of supervisors immediately after its election shall
32 choose one of its number president of the board, and elect some suitable
33 person secretary, who may or may not be a member of the board. The
34 board shall adopt a seal with a suitable design, and shall keep a record of all

1 its proceedings [which shall be open to the inspection of all owners of
2 real estate of the district, as well as to all other interested persons]. The
3 board shall report to the landowners at the annual meeting held under
4 the provision of ORS 547.110 what work has been done, either by the
5 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
6 if the secretary is a member of the board he shall be entitled to compen-
7 sation as provided for in ORS 547.125.

Insert ②
8 Section 29. ORS 576.024^② is amended to read: _____, as

amended by section 19, chapter 174, Oregon Laws 1973
(Enrolled Senate Bill 476),

including information for economic studies of the livestock industry
12 including the volume of production of livestock in this state; the chan-
13 nels into which such livestock is marketed; the total consumption of meat
14 in this state; the types and quantities consumed and the sources thereof;
15 and such other information as is pertinent to reveal additional potential
16 markets for livestock produced in this state.

Insert ③
17 (2) In order to carry out and maintain this continuing study, the de-
18 partment is authorized during business hours to inspect the records of
19 places or businesses which handle, store or sell meat animals, or meat at the
applicable provisions of [this 1973 Act] chapter 174,
Oregon Laws 1973 (Enrolled Senate Bill 476)

23 [(a) When necessary in preparation or publishing statistics as are
24 necessary to carry out the purpose and intent of this section but which
25 shall not reveal any confidential data or information of the identity of
26 specific or particular places of business or establishments.]

27 [(b) When necessary in carrying out the responsibilities of the de-
28 partment under laws under its supervision and jurisdiction.]

29 (3) The department, after public hearing under ORS chapter 183, may
30 require periodic reporting from the places or businesses described in this
31 section and require the furnishing to the department of the data or infor-
32 mation which may be needed in continuing the comprehensive study as
33 authorized in this section.

1 its proceedings [, which shall be open to the inspection of all owners of
2 real estate of the district, as well as to all other interested persons]. The
3 board shall report to the landowners at the annual meeting held under
4 the provision of ORS 547.110 what work has been done, either by the
5 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
6 if the secretary is a member of the board he shall be entitled to compen-
7 sation as provided for in ORS 547.125.

8 Section 29. ORS 576.024⁽²⁾ is amended to read:

9 576.024. (1) It is necessary for the economy of this state, the livestock
10 industry and the welfare of the consuming public that the department ob-
11 tain statistical information for economic studies of the livestock industry
12 including the volume of production of livestock in this state; the chan-
13 nels into which such livestock is marketed; the total consumption of meat
14 in this state; the types and quantities consumed and the sources thereof;
15 and such other information as is pertinent to reveal additional potential
16 markets for livestock produced in this state.

17 (2) In order to carry out and maintain this continuing study, the de-
18 partment is authorized during business hours to inspect the records of
19 places or businesses which handle, store or sell meat animals, or meat as
20 defined in ~~ORS 619.610~~⁽³⁾. [Such data and information shall not be a public
21 record. The department however may release or use such data or informa-
22 tion.]

23 [(a) When necessary in preparation or publishing statistics as are
24 necessary to carry out the purpose and intent of this section but which
25 shall not reveal any confidential data or information of the identity of
26 specific or particular places of business or establishments.]

27 [(b) When necessary in carrying out the responsibilities of the de-
28 partment under laws under its supervision and jurisdiction.]

29 (3) The department, after public hearing under ORS chapter 183, may
30 require periodic reporting from the places or businesses described in this
31 section and require the furnishing to the department of the data or infor-
32 mation which may be needed in continuing the comprehensive study as
33 authorized in this section.

1 Section 30. ORS 576.395 is amended to read:

2 576.395. [(1)] The commission shall keep accurate books, records and
3 accounts of all its dealings which shall be open to inspection and audit by
4 the Secretary of State.

5 [(2) *The amount of assessment moneys paid to the commission and*
6 *reports or information filed with the commission by a first purchaser or*
7 *producer under ORS 576.051 to 576.584 are not a public record.*]

8 Section 31. ORS 577.826 is amended to read:

9 577.826. (1) After a petition is received or a written request is re-
10 ceived from the council as authorized by ORS 577.810, all persons eligible to
11 vote may vote in the referendum provided they register with the depart-
12 ment their names and such other pertinent information as is required.
13 The department shall provide a period of not less than 20 days during
14 which such persons may register. [*Only the names and addresses of the*
15 *persons who register are public record.*] The department thereafter shall
16 compile and file the list of persons eligible to vote, in the Salem office of
17 the department and may publish such list as it deems necessary for the
18 benefit of producers.

19 (2) Within 60 days after the list is filed, the department shall conduct
20 the referendum.

21 Section 32. ORS 578.190 is amended to read:

22 578.190. [(1)] The commission shall keep accurate books, records and
23 accounts of all its dealings which shall be open to inspection and audit by
24 the Secretary of State.

25 [(2) *The amount of assessment moneys paid to the commission and*
26 *reports or information filed with the commission by a first purchaser or*
27 *grower under this chapter are not a public record.*]

28 Section 33. ORS 579.185 is amended to read:

29 579.185. [(1)] The commission shall keep accurate books, records and
30 accounts of all its dealings which shall be open to inspection and audit
31 by the Secretary of State.

32 [(2) *The amount of assessment moneys paid to the commission and*
33 *reports or information filed with the commission by a first purchaser or*
34 *grower under this chapter are not a public record.*]

1 Section 33a. ORS 656.702 is amended to read:
2 656.702. The records of the [*board and the*] State Accident Insurance
3 Fund, excepting [*payrolls and confidential reports*] **employer account rec-**
4 **ords and dividend schedules and formulas**, shall be open to public inspec-
5 tion. The accident experience records of the fund [*for periods prior and*
6 *subsequent to January 1, 1966,*] shall be available to a bona fide rating
7 organization to assist in making workmen's compensation rates providing
8 any costs involved in making the records available shall be borne by the
9 rating organization. Accident experience records of direct responsibility
10 employers insuring with insurers issuing guaranty contracts under sub-
11 section (1) of ORS 656.405 shall also be available on the same terms to
12 assist in making such rates.

13 **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
14 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580,
15 697.220, 697.725 and 721.050 are repealed.

16 **SECTION 35.** This Act being necessary for the immediate preservation
17 of the public peace, health and safety, an emergency is declared to exist,
18 and this Act takes effect July 1, 1973.

**SENATE AMENDMENTS TO
PRINTED ENGROSSED HOUSE BILL 2157**

By JOINT SPECIAL COMMITTEE ON
PROFESSIONAL RESPONSIBILITY

June 23

- 1 On page 7 of the printed engrossed bill, line 14, delete "and".
 - 2 In line 17, delete the period and insert "; and".
 - 3 After line 17, insert:
 - 4 "(h) Investigatory information relating to any complaint filed under
 - 5 ORS 659.040 or 659.045, until such time as the complaint is resolved under
 - 6 ORS 659.050, or a final administrative determination is made under ORS
 - 7 659.060."
 - 8 On page 9, line 21, after "44.040" insert ", as amended by section 6, chap-
 - 9 ter —, Oregon Laws 1973 (Enrolled House Bill 2101),".
 - 10 On page 10, line 5, after "(d)" insert "Subject to the provisions of sec-
 - 11 tions 1 to 5 of chapter —, Oregon Laws 1973 (Enrolled House Bill
 - 12 2101),".
 - 13 On page 15 of the printed engrossed bill, after line 18, insert:
 - 14 "SECTION 27a. If Senate bill 106 (1973 regular session) becomes law,
 - 15 on the effective date of chapter —, Oregon Laws 1973 (Enrolled Senate
 - 16 Bill 106), section 27 of this Act is repealed."
-

ENGROSSED

House Bill 2157

Ordered by the House
(Including Amendments by Joint Special Committee on
Professional Responsibility May 17)

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST, MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS, WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request of the Attorney General)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney fees to successful applicants.

[Requires meetings of public boards, bureaus, commissions, committees and subcommittees to be open to public unless such meetings relate to labor negotiations, individual personnel matters or preliminary negotiations on matters of trade or commerce where public body is in competition with public body in other state or nation.] Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, 522.510, 522.520, 547.120, 561.265, 573.350, 576.024, 576.395, 577.826,
5 578.190, 579.185 and 656.702; repealing ORS 128.700, 192.010, 192.020,
6 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017,
7 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050; and declaring an
8 emergency.

9 Be It Enacted by the People of the State of Oregon:

10 **SECTION 1.** Sections 2 to 11 of this Act are added to and made a part
11 of ORS chapter 192.

12 SECTION 2. As used in this 1973 Act:

(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

SECTION 4. The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect shall give him, on demand, a certified copy of it,
9 if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy.

11 (2) The public body may establish fees reasonably calculated to re-
12 imburse it for its actual cost in making such records available.

13 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
14 denied the right to inspect or to receive a copy of any public record of a
15 state agency may petition the Attorney General to review the public record
16 to determine if it may be withheld from public inspection. The burden is
17 on the agency to sustain its action. The Attorney General shall issue his
18 order denying or granting the petition, or denying it in part and granting
19 it in part, within three business days from the day he receives the petition.

20 (2) If the Attorney General grants the petition and orders the state
21 agency to disclose the record, or if he grants the petition in part and
22 orders the state agency to disclose a portion of the record, the state agency
23 may institute proceedings for injunctive or declaratory relief in the Circuit
24 Court for Marion County. If the Attorney General denies the petition in
25 whole or in part, or if the state agency continues to withhold the record or
26 a part of it notwithstanding an order to disclose by the Attorney General,
27 the person seeking disclosure may institute such proceedings.

28 (3) The Attorney General shall serve as counsel for the state agency
29 in a suit filed under subsection (2) of this section if the suit arises out of
30 a determination by him that the public record should not be disclosed, or
31 that a part of the public record should not be disclosed if the state agency
32 has fully complied with his order requiring disclosure of another part or
33 parts of the public record, and in no other case. In any case in which the

1 Attorney General is prohibited from serving as counsel for the state agency,
2 the agency may retain special counsel.

3 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
4 case of a person denied the right to inspect or receive a copy of any public
5 record of a public body other than a state agency, except that in such case
6 the district attorney of the county in which the public body is located, or if
7 it is located in more than one county the district attorney of the county
8 in which the administrative offices of the public body are located, shall
9 carry out the functions of the Attorney General, and any suit filed shall be
10 filed in the circuit court for such county, and except that the district attor-
11 ney shall not serve as counsel for the public body, in the cases permitted
12 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
13 serves as counsel for it.

14 **SECTION 8.** In any case in which a person is denied the right to inspect
15 or to receive a copy of a public record in the custody of an elected official,
16 or in the custody of any other person but as to which an elected official
17 claims the right to withhold disclosure, no petition to require disclosure
18 may be filed with the Attorney General or district attorney, or if a petition
19 is filed it shall not be considered by the Attorney General or district attor-
20 ney after a claim of right to withhold disclosure by an elected official. In
21 such case a person denied the right to inspect or to receive a copy of a pub-
22 lic record may institute proceedings for injunctive or declaratory relief
23 in the appropriate circuit court, as specified in section 6 or 7 of this 1973
24 Act, and the Attorney General or district attorney may upon request serve
25 or decline to serve, in his discretion, as counsel in such suit for an elected
26 official for which he ordinarily serves as counsel. Nothing in this section
27 shall preclude an elected official from requesting advice from the Attorney
28 General or a district attorney as to whether a public record should be
29 disclosed.

30 **SECTION 9.** (1) In any suit filed under sections 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

1 court, on its own motion, may view the documents in controversy in
2 camera before reaching a decision. Any noncompliance with the order of
3 the court may be punished as contempt of court.

4 (2) Except as to causes the court considers of greater importance, pro-
5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
6 docket over all other causes and shall be assigned for hearing and trial at
7 the earliest practicable date and expedited in every way.

8 (3) If a person seeking the right to inspect or to receive a copy of a
9 public record prevails in such suit, he shall be awarded his reasonable
10 attorney fees. If such person prevails in part, the court may in its dis-
11 cretion award him his reasonable attorney fees, or an appropriate portion
12 thereof.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
14 torney requesting him to order a public record to be made available for
15 inspection or to be produced shall be in substantially the following form,
16 or in a form containing the same information:

17 _____
18 _____ (date)
19 I (we), _____, the undersigned, request the
20 _____ (name(s))
21 Attorney General (or District Attorney of _____ County) to
22 order _____ and its employees to (make
23 _____ (name of governmental body)
24 available for inspection) (produce a copy or copies of) the following records:

25 1. _____
26 _____ (Name or description of record)

27 2. _____
28 _____ (Name or description of record)

29 I (we) asked to inspect and/or copy these records on _____ (date)
30 at _____ (address). The request was denied by the follow-
31 ing person(s):

32 1. _____
33 _____ (Name of public officer or employee; title or position, if known)

34 2. _____
35 _____ (Name of public officer or employee; title or position, if known)

36 _____ (Signature(s))

37 This form should be delivered or mailed to the Attorney General's office
38 in Salem, or the district attorney's office in the county courthouse.

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 (a) Records of a public body pertaining to litigation to which the public
13 body is a party if the complaint has been filed, or if the complaint has not
14 been filed, if the public body shows that such litigation is reasonably
15 likely to occur. This exemption does not apply to litigation which has
16 been concluded, and nothing in this paragraph shall limit any right or
17 opportunity granted by discovery or deposition statutes to a party to
18 litigation or potential litigation;

19 (b) Trade secrets. "Trade secrets," as used in this section, may include,
20 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
21 compound, procedure, production data, or compilation of information which
22 is not patented, which is known only to certain individuals within a
23 commercial concern who are using it to fabricate, produce, or compound an
24 article of trade or a service or to locate minerals or other substances, having
25 commercial value, and which gives its user an opportunity to obtain a
26 business advantage over competitors who do not know or use it;

27 (c) Investigatory information for criminal law purposes, except that
28 the record of an arrest or the report of a crime shall not be confidential
29 unless and only so long as there is a clear need in a particular case to
30 delay disclosure in the course of an investigation. Nothing in this para-
31 graph shall limit any right constitutionally guaranteed, or granted by
32 statute, to disclosure or discovery in criminal cases;

33 (d) Test questions, scoring keys, and other examination data used to
34 administer a licensing examination, examination for employment, or aca-

1 demic examination before the examination is given and if the examination
2 is to be used again;

3 (e) Information consisting of production records, sale or purchase
4 records or catch records, or similar business records of a private concern or
5 enterprise, required by law to be submitted to or inspected by a govern-
6 mental body to allow it to determine fees or assessments payable or to
7 establish production quotas, and the amounts of such fees or assessments
8 payable or paid, to the extent that such information is in a form
9 which would permit identification of the individual concern or enterprise.
10 Nothing in this paragraph shall limit the use which can be made of such
11 information for regulatory purposes or its admissibility in any enforcement
12 proceeding;

13 (f) Information relating to the appraisal of real estate prior to its
14 acquisition; and

15 (g) The names and signatures of employes who sign authorization
16 cards or petitions for the purpose of requesting representation or decerti-
17 fication elections.

18 (2) The following public records are exempt from disclosure under
19 this 1973 Act:

20 (a) Communications within a public body or between public bodies
21 of an advisory nature to the extent that they cover other than purely
22 factual materials and are preliminary to any final agency determination
23 of policy or action. This exemption shall not apply unless the public body
24 shows that in the particular instance the public interest in encouraging
25 frank communication between officials and employes of public bodies
26 clearly outweighs the public interest in disclosure;

27 (b) Information of a personal nature such as that kept in a personal,
28 medical or similar file, if the public disclosure thereof would constitute
29 an unreasonable invasion of privacy, unless the public interest by clear
30 and convincing evidence requires disclosure in the particular instance.
31 The party seeking disclosure shall have the burden of showing that public
32 disclosure would not constitute an unreasonable invasion of privacy;

33 (c) Information submitted to a public body in confidence and not
34 otherwise required by law to be submitted, where such information should

1 reasonably be considered confidential, the public body has obliged itself
2 in good faith not to disclose the information, and when the public interest
3 would suffer by the disclosure;

4 (d) Information or records of the Corrections Division, including the
5 State Board of Parole and Probation, to the extent that disclosure thereof
6 would interfere with the rehabilitation of a person in custody of the divi-
7 sion or substantially prejudice or prevent the carrying out of the functions
8 of the division, if the public interest in confidentiality clearly outweighs
9 the public interest in disclosure;

10 (e) Records, reports and other information received or compiled by
11 the Superintendent of Banks in his administration of ORS chapters 723,
12 724, 725 and 726, not otherwise required by law to be made public, to the
13 extent that the interests of lending institutions, their officers, employees
14 and customers in preserving the confidentiality of such information out-
15 weighs the public interest in disclosure;

16 (f) Reports made to or filed with the court under ORS 137.075 or
17 137.530;

18 (g) Any public records or information the disclosure of which is pro-
19 hibited by federal law or regulations;

20 (h) Public records or information the disclosure of which is prohibited
21 or restricted or otherwise made confidential or privileged under ORS
22 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540,
23 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065,
24 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430,
25 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050,
26 731.264 or 744.017; and

27 (i) Public records or information described in this section, furnished
28 by the public body originally compiling, preparing or receiving them to any
29 other public officer or public body in connection with performance of the
30 duties of the recipient, if the considerations originally giving rise to the
31 confidential or exempt nature of the public records or information remain
32 applicable.

33 (3) If any public record contains material which is not exempt under
34 subsection (1), (2) or (4) of this section, as well as material which is exempt

1 from disclosure, the public body shall separate the exempt and nonexempt
2 material and make the nonexempt material available for examination.

3 (4) (a) Upon application of any public body prior to convening of the
4 1975 regular session of the Legislative Assembly, the Governor may exempt
5 any class of public records, in addition to the classes specified in subsection
6 (1) of this section, from disclosure under this 1973 Act unless the public
7 interest requires disclosure in the particular instance, if he finds that the
8 class of public records for which exemption is sought is such that unlimited
9 public access thereto would substantially prejudice or prevent the carrying
10 out of any public function or purpose, so that the public interest in confi-
11 dentiality of such records substantially outweighs the public interest in
12 disclosure. Such exemption from disclosure shall be limited or conditioned
13 to the extent the Governor finds appropriate.

14 (b) Prior to the granting of any exemption under this subsection the
15 Governor shall hold a public hearing after notice as provided by ORS
16 183.335, or he may designate the Attorney General to hold the required
17 hearing.

18 (c) Any exemption granted under this subsection shall expire upon
19 adjournment of the 1975 regular session of the Legislative Assembly.

20 Note: Section 12 was deleted by amendment.

21 Section 13. ORS 44.040 is amended to read:

22 44.040. (1) There are particular relations in which it is the policy of
23 the law to encourage confidence, and to preserve it inviolate; therefore a
24 person cannot be examined as a witness in the following cases:

25 (a) A husband shall not be examined for or against his wife without
26 her consent, or a wife for or against her husband without his consent; nor
27 can either, during the marriage or afterwards, be, without the consent of
28 the other, examined as to any communication made by one to the other dur-
29 ing the marriage. The exception does not apply to a civil action, suit or
30 proceeding, by one against the other, or to a criminal action or proceeding
31 for a crime committed by one against the other.

32 (b) An attorney shall not, without the consent of his client, be examined
33 as to any communication made by the client to him, or his advice given
34 thereon, in the course of professional employment.

1 (c) A priest or clergyman shall not, without the consent of the person
2 making the confession, be examined as to any confession made to him in
3 his professional character, in the course of discipline enjoined by the
4 church to which he belongs.

5 (d) A regular physician or surgeon shall not, without the consent of
6 his patient, be examined in a civil action, suit or proceeding, as to any
7 information acquired in attending the patient, which was necessary to
8 enable him to prescribe or act for the patient.

9 (e) A public officer shall not be examined as to [*communications made*
10 *to him in official confidence, when the public interest would suffer by the*
11 *disclosure.*] public records exempt from disclosure under this 1973 Act.

12 (f) A stenographer shall not, without the consent of his or her
13 employer, be examined as to any communication or dictation made by
14 the employer to him or her in the course of professional employment.

15 (g) A licensed professional nurse shall not, without the consent
16 of a patient who was cared for by such nurse, be examined in a civil action,
17 suit or proceeding, as to any information acquired in caring for the patient,
18 which was necessary to enable the nurse to care for the patient.

19 (h) A certified psychologist, as defined in ORS 675.010, shall
20 not, without the consent of his client, be examined as to any communication
21 made by the client to him, or his advice given thereon, in the course of his
22 professional employment.

23 (i) A certified staff member of an elementary or secondary
24 school shall not be examined in any civil action, suit or proceeding, as to
25 any conversation between the certificated staff member and a student
26 which relates to the personal affairs of the student or his family, and
27 which if disclosed would tend to damage or incriminate the student or
28 his family. Any violation of the privilege provided by this section may
29 result in the suspension of certification of the professional staff member
30 as provided in ORS 342.175 to 342.185.

31 (2) If a party to the action, suit or proceeding offers himself as a
32 witness, it is deemed a consent to the examination also of a wife, husband,
33 attorney, clergyman, physician or surgeon, stenographer, licensed profes-

1 sional nurse, certified psychologist or certificated staff member on the
2 same subject.

3 Section 14. ORS 59.680 is amended to read:

4 59.680. In addition to the filing of the bond required under ORS 59.670,
5 every such person shall file with the Corporation Commissioner, on or
6 before the 10th day of each month, a verified statement showing the
7 total amount of money received by him on account of the sale of outstand-
8 ing and unredeemed shares theretofore issued by him and which were in
9 force on the last day of the preceding month. This statement shall also set
10 forth the name and address of every person who during the preceding
11 month became a purchaser of any such share, together with the amount of
12 money collected thereon and paid or to be paid therefor. *[The statement*
13 *shall not be a public record, but shall be only for the information of the*
14 *Corporation Commissioner and shall not be divulged by him or by anyone*
15 *having access thereto except in court proceedings involving violation of*
16 *ORS 59.670 or 59.680.]* At the time of filing this sworn statement, such
17 person shall also deposit with the State Treasurer cash or securities speci-
18 fied as authorized investments for domestic insurance companies under the
19 insurance laws of this state, in a sum at least equal in value, when added
20 to the securities previously deposited by any such person with the State
21 Treasurer, to 50 percent of the total amount theretofore received by such
22 person on account of such shares. If at any time the securities so deposited
23 are in excess of 50 percent of the amount received on account of the then
24 outstanding and unredeemed shares such person may withdraw the excess,
25 and the State Treasurer is directed to return the excess to the person de-
26 positing it. The securities so deposited shall be for the protection of all
27 purchasers, or holders, of any such shares from the respective persons
28 making the deposit, but a deposit by any such person hereunder shall be
29 security only for the performance of his own contract as evidenced by
30 the share sold and disposed of by him. The cash or securities, together with
31 all accrued interest or dividends, shall be held and disposed of in the
32 manner provided by law in respect to cash or securities deposited with the
33 State Treasurer, and he shall be entitled to collect the fees authorized
34 pursuant to state law pertaining to and regulating title insurance.

1 Section 15. ORS 146.780 is amended to read:

2 146.780. (1) Every medical investigator who receives a report under
3 ORS 146.750 shall immediately report by telephone to the Chief Medical
4 Investigator and shall record the details of the report on a form provided
5 by the office of the Chief Medical Investigator and shall send a copy of
6 the completed form to the Chief Medical Investigator.

7 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
8 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-
9 lic inspection of public records [and public documents], records and reports
10 compiled under the provisions of this section are confidential and are not
11 accessible for public inspection.

12 Section 16. ORS 181.540 is amended to read:

13 181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170]
14 sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility
15 for public inspection of public records [and public documents], finger-
16 prints, photographs, records and reports compiled under the provisions of
17 ORS 181.510 to 181.530 are confidential and are not accessible for public
18 inspection except as provided in subsection (2) of ORS 181.065, or as ordered
19 by a court.

20 Section 17. ORS 255.015 is amended to read:

21 255.015. [(1) The provisions of ORS 192.005 to 192.170 notwithstanding,
22 voters' pamphlet material shall be available to the public as provided in
23 subsection (2) of this section.]

24 [(2)] After the 65th day prior to the date of the primary or general
25 election the Secretary of State shall, upon request, make available to any
26 person voters' pamphlet material filed pursuant to the provisions contained
27 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

28 Section 18. ORS 274.745 is amended to read:

29 274.745. (1) Records of drilling conducted by a permittee under ORS
30 274.740 shall be filed by the permittee with the State Department of Geology
31 and Mineral Industries as prescribed by ORS 520.095. [Such records shall be
32 treated as confidential for a period of five years from the date of filing
33 unless the permittee authorizes their earlier release.]

34 (2) The division may require, as a condition to the issuance of any lease

1 under ORS 274.705 to 274.860, that the lessee make available to the division,
2 or the State Department of Geology and Mineral Industries, upon request,
3 all factual and physical exploration results, logs and records resulting from
4 the operations under the lease. *[Any such factual or physical exploration*
5 *results, logs or records which the lessee is required to make available to the*
6 *division and the department shall not be open to inspection by any other*
7 *person or agency without the written consent of the lessee.]*

8 *[(3) No member of the Department of Geology and Mineral Industries,*
9 *officer or employe thereof, or any person performing any function or work*
10 *assigned to him by the department, shall disclose to any person who is not*
11 *a member, officer, employe of the department or to any person who is not*
12 *performing any function or work assigned to him by the department, any*
13 *information obtained from the inspection of such factual or physical explor-*
14 *ation results, logs or records, or use such information for purposes other*
15 *than the administration of the functions, responsibilities, and duties vested*
16 *in the department by law, except upon the written consent of the permittee*
17 *or lessee making such information available to the department.]*

18 Note: Sections 19 through 23 were deleted by amendment.

19 Section 24. ORS 522.510 is amended to read:

20 522.510. (1) The owner or operator of any well shall keep, or cause
21 to be kept, a careful and accurate log, core record and history of the drill-
22 ing of the well.

23 (2) The log referred to in subsection (1) of this section shall show the
24 character and depth of each formation encountered in the drilling of the
25 well; the amount, size and weight of casing used; and the location, depth
26 and temperature of water-bearing strata, including the temperature, chemi-
27 cal composition and other chemical and physical characteristics of fluid
28 encountered from time to time.

29 (3) The core record referred to in subsection (1) of this section shall
30 show the depth, character and fluid content of cores obtained, so far as
31 determined from the study and analysis thereof.

32 (4) The history referred to in subsection (1) of this section shall show
33 the location and amount of sidetracked casings, tools or other material;
34 the depth and quantity of cement in cement plugs; the shots of dynamite

1 or other explosives used; the results of production and other tests during
2 drilling operations and completion data.

3 (5) The log referred to in subsections (1) and (2) of this section shall
4 be kept in the local office of the owner or operator and, together with the
5 tour reports of the owner or operator, shall be subject, during business
6 hours, to inspection by the board, the supervisor or his authorized deputy [;
7 *except, any log kept with respect to a prospect well*].

8 Section 25. ORS 522.520 is amended to read:

9 522.520. Each owner or operator of any well or **prospect well** or his
10 designated agent shall file with the supervisor a copy of the log, history
11 and core record, or any portion thereof, **promptly upon completion, or**
12 **upon the written request of the supervisor or his authorized deputy at any**
13 **time after the commencement, of the work of drilling any well [other**
14 **than a] or prospect well [upon the written request of the supervisor or**
15 **his authorized deputy] and upon the abandonment or upon suspension of**
16 **operations conducted with respect to any well for a period of at least six**
17 **months.** The request shall be signed by the supervisor or the deputy and
18 served upon such owner, operator or agent either personally or by mail-
19 ing a copy of the request by [*registered*] certified mail to the last-known
20 post-office address of such owner, operator or agent.

21 Section 26. ORS 561.265 is amended to read:

22 561.265. (1) The department upon not less than three days notice in
23 writing is authorized to inspect and audit, during regular business hours,
24 necessary and applicable books and records of any person required by law
25 to report or pay fees or moneys to the department. Such inspection is for
26 the purpose of determining whether proper fees have been paid.

27 (2) "Fees" as used in this section includes fees due the department
28 by a person, each month, year, or other fixed time or period, the amount
29 of which is based upon the quantity, volume, weight or other measurement
30 of some article, product or commodity and such fees to be used by the
31 department in carrying out or enforcing a law under its jurisdiction. "Fees"
32 does not include a license fee, the exact amount of which is fixed by law.

33 [(3) Information obtained by the department under the provisions of
34 this section shall not be a public record.]

1 Section 27. ORS 573.350 is amended to read:

2 573.350. (1) Each person responsible for the payment of the fees
3 required by ORS 573.340 shall file a report with the department on October
4 1, January 1, April 1 and July 1 of each year in which payment of the
5 fees is required of the number of pounds of such herbicides sold, used or
6 consumed during the three calendar months immediately preceding the
7 date the report is due. The proper poundage fee shall be remitted with the
8 report. The person required to file the report and pay the fee shall have
9 a 15-day period of grace, immediately following the day the report and
10 payment are due, to file the report and pay the fee.

11 (2) No user or consumer of such herbicides is required to file a report
12 if the herbicides have been purchased from a manufacturer, jobber, broker
13 or wholesaler who is responsible for the payment of the fee on poundage
14 sold or from a retailer doing business in this state.

15 *[(3) The report required by this section shall not be a public record;*
16 *however, the board or the department may prepare and publish from its*
17 *records such statistics and information as it deems advisable and which*
18 *will not reveal any confidential information.]*

19 Section 28. ORS 547.120 is amended to read:

20 547.120. The board of supervisors immediately after its election shall
21 choose one of its number president of the board, and elect some suitable
22 person secretary, who may or may not be a member of the board. The
23 board shall adopt a seal with a suitable design, and shall keep a record of all
24 its proceedings *[, which shall be open to the inspection of all owners of*
25 *real estate of the district, as well as to all other interested persons]*. The
26 board shall report to the landowners at the annual meeting held under
27 the provision of ORS 547.110 what work has been done, either by the
28 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
29 if the secretary is a member of the board he shall be entitled to compen-
30 sation as provided for in ORS 547.125.

31 Section 29. ORS 576.024 is amended to read:

32 576.024. (1) It is necessary for the economy of this state, the livestock
33 industry and the welfare of the consuming public that the department ob-
34 tain statistical information for economic studies of the livestock industry

1 including the volume of production of livestock in this state; the chan-
2 nels into which such livestock is marketed; the total consumption of meat
3 in this state; the types and quantities consumed and the sources thereof;
4 and such other information as is pertinent to reveal additional potential
5 markets for livestock produced in this state.

6 (2) In order to carry out and maintain this continuing study, the de-
7 partment is authorized during business hours to inspect the records of
8 places or businesses which handle, store or sell meat animals, or meat as
9 defined in ORS 619.610. *[Such data and information shall not be a public*
10 *record. The department however may release or use such data or informa-*
11 *tion:]*

12 *[(a) When necessary in preparation or publishing statistics as are*
13 *necessary to carry out the purpose and intent of this section but which*
14 *shall not reveal any confidential data or information of the identity of*
15 *specific or particular places of business or establishments.]*

16 *[(b) When necessary in carrying out the responsibilities of the de-*
17 *partment under laws under its supervision and jurisdiction.]*

18 (3) The department, after public hearing under ORS chapter 183, may
19 require periodic reporting from the places or businesses described in this
20 section and require the furnishing to the department of the data or infor-
21 mation which may be needed in continuing the comprehensive study as
22 authorized in this section.

23 Section 30. ORS 576.395 is amended to read:

24 576.395. [(1)] The commission shall keep accurate books, records and
25 accounts of all its dealings which shall be open to inspection and audit by
26 the Secretary of State.

27 *[(2) The amount of assessment moneys paid to the commission and*
28 *reports or information filed with the commission by a first purchaser or*
29 *producer under ORS 576.051 to 576.584 are not a public record.]*

30 Section 31. ORS 577.826 is amended to read:

31 577.826. (1) After a petition is received or a written request is re-
32 ceived from the council as authorized by ORS 577.810, all persons eligible to
33 vote may vote in the referendum provided they register with the depart-
34 ment their names and such other pertinent information as is required.

1 The department shall provide a period of not less than 20 days during
2 which such persons may register. *[Only the names and addresses of the*
3 *persons who register are public record.]* The department thereafter shall
4 compile and file the list of persons eligible to vote, in the Salem office of
5 the department and may publish such list as it deems necessary for the
6 benefit of producers.

7 (2) Within 60 days after the list is filed, the department shall conduct
8 the referendum.

9 Section 32. ORS 578.190 is amended to read:

10 578.190. *[(1)]* The commission shall keep accurate books, records and
11 accounts of all its dealings which shall be open to inspection and audit by
12 the Secretary of State.

13 *[(2) The amount of assessment moneys paid to the commission and*
14 *reports or information filed with the commission by a first purchaser or*
15 *grower under this chapter are not a public record.]*

16 Section 33. ORS 579.185 is amended to read:

17 579.185. *[(1)]* The commission shall keep accurate books, records and
18 accounts of all its dealings which shall be open to inspection and audit
19 by the Secretary of State.

20 *[(2) The amount of assessment moneys paid to the commission and*
21 *reports or information filed with the commission by a first purchaser or*
22 *grower under this chapter are not a public record.]*

23 Section 33a. ORS 656.702 is amended to read:

24 656.702. The records of the *[board and the]* State Accident Insurance
25 Fund, excepting *[payrolls and confidential reports]* employer account rec-
26 ords and dividend schedules and formulas, shall be open to public inspec-
27 tion. The accident experience records of the fund *[for periods prior and*
28 *subsequent to January 1, 1966,]* shall be available to a bona fide rating
29 organization to assist in making workmen's compensation rates providing
30 any costs involved in making the records available shall be borne by the
31 rating organization. Accident experience records of direct responsibility
32 employers insuring with insurers issuing guaranty contracts under sub-
33 section (1) of ORS 656.405 shall also be available on the same terms to
34 assist in making such rates.

1 **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
2 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580,
3 697.220, 697.725 and 721.050 are repealed.

4 **SECTION 35.** This Act being necessary for the immediate preservation
5 of the public peace, health and safety, an emergency is declared to exist,
6 and this Act takes effect July 1, 1973.

HOUSE COMMITTEE REPORT

HB 2157

Joint Special
COMMITTEE ON Professional Responsibility **DATED** 5/17/73

Mr. Speaker: The committee on Professional Responsibility to whom was referred
HB 2157, having had the same under consideration, respectfully reports it back with the recom-
mendation:

- ☐ that the bill do pass.
☒ that the bill do pass as amended.
☐ that the bill be now referred to the Committee on _____
_____ (according to prior reference)

☐ _____

IDENTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

The amendments made by the committee pertained to section 11 of the printed bill. This section relates to exemptions from making records public unless the public interest requires disclosure in the particular interest. The open meetings portion of the bill was deleted and put into a separate bill, SB 15.

PLANATION OF THE BILL:

Provides for exemption of specified public records from disclosure requirements. Gives persons procedure for appeal if records are not disclosed to them. Modifies or repeals certain provisions relating to public records and their disclosure. There is an emergency clause.

ATTACHMENTS

- ☐ Ungrossed bill
☐ Attested by E & E
☐ Attested by Leg. Counsel

Robert C. Ingalls
Chairman Robert Ingalls Date: May 17, 1973

HOUSE AMENDMENTS

TO HB 2157 (Open Records)

Joint Special
COMMITTEE ON Professional Responsibility

Committee Report dated May 17, 1973 Date(s) of Committee Action: May 14, 1973

The amendments to HB 2157 are attached.

Loretta Hill
Committee Clerk Loretta Hill (ext. 8893)

PROPOSED AMENDMENTS TO

HOUSE BILL 2157

(Including proposed amendments 1 through 11 and 13 previously submitted by the Attorney General, and further amendments suggested by Prof. Dominick Vetri for the ACLU.)

On page 2 of the printed bill, in line 4, delete "341.290, 342.850, 432.115, 476.090, 483.610,".

On page 2, in line 5, delete "and" and insert a comma, and after "579.185" insert "and 656.702".

On page 2, in line 6, delete "432.120,".

On page 2, in line 7, delete "432.130," and delete "656.702,".

On page 2, in line 8, after "697.725" delete the comma and insert "and", and delete "and 744.017".

On page 2, in line 10, delete "12" and insert "11".
On page 3, in line 8, delete "is bound to" and insert "shall".

On page 3, in line 10, delete "computer data shall be provided".

On page 3, delete line 11.

On page 4, in line 18, delete "privilege of nondisclosure" and insert "right to withhold disclosure".

On page 4, in line 21, delete "privilege" and insert "right to withhold disclosure".

On page 6, delete lines 12 through 18.

On page 6, in line 19, delete "(b)" and insert "(a)".

On page 6, delete lines 26 through 32.

On page 7, in line 1, delete "(e)" and insert "(b)".

On page 7, in line 9, delete "(f)" and insert "(c)", and delete the period and insert: ", except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation."

On page 7, in line 12, delete "(g)" and insert "(d)".

On page 7, in line 14, delete the semicolon and insert "before the examination is given and if the examination is to be used again;".

On page 7, in line 15, delete "(h)" and insert "(e)".

On page 7, in line 19, after the comma insert "and the amounts of such fees or assessments payable or paid,".

On page 7, in line 24, delete "(i)" and insert "(f)".

On page 7, in line 25, after the semicolon insert "and".
On page 7, delete lines 26 through 33 and insert:

"(g) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections."

On page 8, delete lines 1 through 7 and insert:

"(2) The following public records are exempt from disclosure under this 1973 Act:

"(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging

frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

"(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

"(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

"(d) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

"(e) Records, reports and other information received or compiled by the Superintendent of ^{Banking} ~~Banking~~, in his administration of ORS chapters 723, 724, 725 and 726, not otherwise

required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

"(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

"(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

"(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, ^{41.675}44.040, 57.850, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 474.160, 476.090, 483.610, ^{656.702}~~656.707~~, 657.665, 706.720, 706.730, 715.040, 721.050, 731.264 or 744.017.

"(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable."

On page 8, in line 8, delete "(2)" and insert "(3)".

On page 8, in line 9, after "(1)" insert ", (2)" and delete "(3)" and insert "(4)".

On page 8, in line 12, delete "(3)" and insert "(4)".

On page 8, delete lines 29 through 33 and insert:

"Note: Section 12 was deleted by amendment."

Delete all of page 9.

On page 10, delete lines 1 through 10.

On page 11, in line 1, delete the initial bracket and restore: "(e) A public officer shall not be examined as to".

On page 11, in line 3, after the bracketed material insert "public records exempt from disclosure under this 1973 Act."

On page 11, in line 4, restore "(f)" and delete "(e)".

On page 11, line 7, restore "(g)" and delete "(f)".

On page 11, line 11, restore "(h)" and delete "(g)".

On page 11, line 15, restore "(i)" and delete "(h)".

On page 14, delete lines 11 through 33 and insert:

"Note: Sections 19 through 23 were deleted by amendment."

Delete all of pages 15 through 17.

On page 18, delete lines 1 through 19.

On page 22, following line 26, insert:

"Section 33a. ORS 656.702 is amended to read:

"656.702. The records of the [board and the] State Accident Insurance Fund, excepting [payrolls and confidential reports] employer account records and dividend schedules and formulas shall be open to public inspection. The accident experience records of the fund [for periods prior and subsequent to January 1, 1966,] shall be available to a bona fide rating organization to assist in making workmen's compensation rates providing any costs involved in making the

records available shall be borne by the rating organization.
) Accident experience records of direct responsibility employers insuring with insurers issuing guaranty contracts under subsection (1) of ORS 656.405 shall also be available on the same terms to assist in making such rates."

On page 22, in line 28, delete "432.120, 432.130,".

On page 27, in line 29, delete "656:702,", and after "697.725" delete the comma and insert "and" and delete "and 744.017".

ENGROSSED

House Bill 2157

Ordered by the House
(Including Amendments by Joint Special Committee on
Professional Responsibility May 17)

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST,
MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS,
WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request
of the Attorney General)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney fees to successful applicants.

[Requires meetings of public boards, bureaus, commissions, committees and subcommittees to be open to public unless such meetings relate to labor negotiations, individual personnel matters or preliminary negotiations on matters of trade or commerce where public body is in competition with public body in other state or nation.] Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with **SECTION.**

1 A BILL FOR AN ACT

2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, 522.510, 522.520, 547.120, 561.265, 573.350, 576.024, 576.395, 577.826,
5 578.190, 579.185 and 656.702; repealing ORS 128.700, 192.010, 192.020,
6 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017,
7 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050; and declaring an
8 emergency.

9 **Be It Enacted by the People of the State of Oregon:**

10 **SECTION 1.** Sections 2 to 11 of this Act are added to and made a part
11 of ORS chapter 192.

12 **SECTION 2.** As used in this 1973 Act:

13 (1) "Public body" includes every state officer, agency, department,
14 division, bureau, board and commission; every county and city governing
15 body, school district, special district, municipal corporation, and any board,
16 department, commission, council, or agency thereof; and any other public
17 agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

25 (5) "Writing" means handwriting, typewriting, printing, photostating,
26 ~~photographing~~ and every means of recording, including letters, words,
27 pictures, sounds, or symbols, or combination thereof, and all papers, maps,
28 magnetic or paper tapes, photographic films and prints, magnetic or punched
29 cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

33 **SECTION 4.** The custodian of any public records, unless otherwise
34 expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect shall give him, on demand, a certified copy of it,
9 if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy.

11 (2) The public body may establish fees reasonably calculated to re-
12 imburse it for its actual cost in making such records available.

13 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
14 denied the right to inspect or to receive a copy of any public record of a
15 state agency may petition the Attorney General to review the public record
16 to determine if it may be withheld from public inspection. The burden is
17 on the agency to sustain its action. The Attorney General shall issue his
18 order denying or granting the petition, or denying it in part and granting
19 it in part, within three business days from the day he receives the petition.

20 (2) If the Attorney General grants the petition and orders the state
21 agency to disclose the record, or if he grants the petition in part and
22 orders the state agency to disclose a portion of the record, the state agency
23 may institute proceedings for injunctive or declaratory relief in the Circuit
24 Court for Marion County. If the Attorney General denies the petition in
25 whole or in part, or if the state agency continues to withhold the record or
26 a part of it notwithstanding an order to disclose by the Attorney General,
27 the person seeking disclosure may institute such proceedings.

28 (3) The Attorney General shall serve as counsel for the state agency
29 in a suit filed under subsection (2) of this section if the suit arises out of
30 a determination by him that the public record should not be disclosed, or
31 that a part of the public record should not be disclosed if the state agency
32 has fully complied with his order requiring disclosure of another part or
33 parts of the public record, and in no other case. In any case in which the

1 Attorney General is prohibited from serving as counsel for the state agency,
2 the agency may retain special counsel.

3 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
4 case of a person denied the right to inspect or receive a copy of any public
5 record of a public body other than a state agency, except that in such case
6 the district attorney of the county in which the public body is located, or if
7 it is located in more than one county the district attorney of the county
8 in which the administrative offices of the public body are located, shall
9 carry out the functions of the Attorney General, and any suit filed shall be
10 filed in the circuit court for such county, and except that the district attor-
11 ney shall not serve as counsel for the public body, in the cases permitted
12 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
13 serves as counsel for it.

14 **SECTION 8.** In any case in which a person is denied the right to inspect
15 or to receive a copy of a public record in the custody of an elected official,
16 or in the custody of any other person but as to which an elected official
17 claims the right to withhold disclosure, no petition to require disclosure
18 may be filed with the Attorney General or district attorney, or if a petition
19 is filed it shall not be considered by the Attorney General or district attor-
20 ney after a claim of right to withhold disclosure by an elected official. In
21 such case a person denied the right to inspect or to receive a copy of a pub-
22 lic record may institute proceedings for injunctive or declaratory relief
23 in the appropriate circuit court, as specified in section 6 or 7 of this 1973
24 Act, and the Attorney General or district attorney may upon request serve
25 or decline to serve, in his discretion, as counsel in such suit for an elected
26 official for which he ordinarily serves as counsel. Nothing in this section
27 shall preclude an elected official from requesting advice from the Attorney
28 General or a district attorney as to whether a public record should be
29 disclosed.

30 **SECTION 9.** (1) In any suit filed under sections 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

1 court, on its own motion, may view the documents in controversy in
 2 camera before reaching a decision. Any noncompliance with the order of
 3 the court may be punished as contempt of court.

4 (2) Except as to causes the court considers of greater importance, pro-
 5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
 6 docket over all other causes and shall be assigned for hearing and trial at
 7 the earliest practicable date and expedited in every way.

8 (3) If a person seeking the right to inspect or to receive a copy of a
 9 public record prevails in such suit, he shall be awarded his reasonable
 10 attorney fees. If such person prevails in part, the court may in its dis-
 11 cretion award him his reasonable attorney fees, or an appropriate portion
 12 thereof.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
 14 torney requesting him to order a public record to be made available for
 15 inspection or to be produced shall be in substantially the following form,
 16 or in a form containing the same information:

17 _____
 18 _____ (date)
 19 I (we), _____, the undersigned, request the
 20 _____ (name(s))
 21 Attorney General (or District Attorney of _____ County) to
 22 order _____ and its employees to (make
 23 _____ (name of governmental body)
 24 available for inspection) (produce a copy or copies of) the following records:

25 1. _____
 26 _____ (Name or description of record)

27 2. _____
 28 _____ (Name or description of record)

29 I (we) asked to inspect and/or copy these records on _____
 30 _____ (date)
 31 at _____ The request was denied by the follow-
 32 _____ (address)
 33 ing person(s):

34 1. _____
 35 _____ (Name of public officer or employee; title or position, if known)

36 2. _____
 37 _____ (Name of public officer or employee; title or position, if known)

38 _____
 39 _____ (Signature(s))

40 This form should be delivered or mailed to the Attorney General's office
 41 in Salem, or the district attorney's office in the county courthouse.

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 (a) Records of a public body pertaining to litigation to which the public
13 body is a party if the complaint has been filed, or if the complaint has not
14 been filed, if the public body shows that such litigation is reasonably
15 likely to occur. This exemption does not apply to litigation which has
16 been concluded, and nothing in this paragraph shall limit any right or
17 opportunity granted by discovery or deposition statutes to a party to
18 litigation or potential litigation;

19 (b) Trade secrets. "Trade secrets," as used in this section, may include,
20 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
21 compound, procedure, production data, or compilation of information which
22 is not patented, which is known only to certain individuals within a
23 commercial concern who are using it to fabricate, produce, or compound an
24 article of trade or a service or to locate minerals or other substances, having
25 commercial value, and which gives its user an opportunity to obtain a
26 business advantage over competitors who do not know or use it;

27 (c) Investigatory information for criminal law purposes, except that
28 the record of an arrest or the report of a crime shall not be confidential
29 unless and only so long as there is a clear need in a particular case to
30 delay disclosure in the course of an investigation. Nothing in this para-
31 graph shall limit any right constitutionally guaranteed, or granted by
32 statute, to disclosure or discovery in criminal cases;

33 (d) Test questions, scoring keys, and other examination data used to
34 administer a licensing examination, examination for employment, or aca-

1 demic examination before the examination is given and if the examination
2 is to be used again;

3 (e) Information consisting of production records, sale or purchase
4 records or catch records, or similar business records of a private concern or
5 enterprise, required by law to be submitted to or inspected by a govern-
6 mental body to allow it to determine fees or assessments payable or to
7 establish production quotas, and the amounts of such fees or assessments
8 payable or paid, to the extent that such information is in a form
9 which would permit identification of the individual concern or enterprise.
10 Nothing in this paragraph shall limit the use which can be made of such
11 information for regulatory purposes or its admissibility in any enforcement
12 proceeding;

13 (f) Information relating to the appraisal of real estate prior to its
14 acquisition; and

15 (g) The names and signatures of employees who sign authorization
16 cards or petitions for the purpose of requesting representation or decerti-
17 fication elections; and

insert (1)
18 (h) Investigatory information relating to any complaint
19 filed under ORS 659.040 or 659.045, until such time as the
20 complaint is resolved under ORS 659.050, or a final adminis-
21 trative determination is made under ORS 659.060."

22 of policy or action. This exemption shall not apply unless the public body
23 shows that in the particular instance the public interest in encouraging
24 frank communication between officials and employees of public bodies
25 clearly outweighs the public interest in disclosure;

26 (b) Information of a personal nature such as that kept in a personal,
27 medical or similar file, if the public disclosure thereof would constitute
28 an unreasonable invasion of privacy, unless the public interest by clear
29 and convincing evidence requires disclosure in the particular instance.
30 The party seeking disclosure shall have the burden of showing that public
31 disclosure would not constitute an unreasonable invasion of privacy;

32 (c) Information submitted to a public body in confidence and not
33 otherwise required by law to be submitted, where such information should
34

1 demic examination before the examination is given and if the examination
2 is to be used again;

3 (e) Information consisting of production records, sale or purchase
4 records or catch records, or similar business records of a private concern or
5 enterprise, required by law to be submitted to or inspected by a govern-
6 mental body to allow it to determine fees or assessments payable or to
7 establish production quotas, and the amounts of such fees or assessments
8 payable or paid, to the extent that such information is in a form
9 which would permit identification of the individual concern or enterprise.
10 Nothing in this paragraph shall limit the use which can be made of such
11 information for regulatory purposes or its admissibility in any enforcement
12 proceeding;

13 (f) Information relating to the appraisal of real estate prior to its
14 acquisition; and

15 (g) The names and signatures of employes who sign authorization
16 cards or petitions for the purpose of requesting representation or decerti-
17 fication elections; and

18 (2) The following public records are exempt from disclosure under
19 this 1973 Act:

20 (a) Communications within a public body or between public bodies
21 of an advisory nature to the extent that they cover other than purely
22 factual materials and are preliminary to any final agency determination
23 of policy or action. This exemption shall not apply unless the public body
24 shows that in the particular instance the public interest in encouraging
25 frank communication between officials and employes of public bodies
26 clearly outweighs the public interest in disclosure;

27 (b) Information of a personal nature such as that kept in a personal,
28 medical or similar file, if the public disclosure thereof would constitute
29 an unreasonable invasion of privacy, unless the public interest by clear
30 and convincing evidence requires disclosure in the particular instance.
31 The party seeking disclosure shall have the burden of showing that public
32 disclosure would not constitute an unreasonable invasion of privacy;

33 (c) Information submitted to a public body in confidence and not
34 otherwise required by law to be submitted, where such information should

1 reasonably be considered confidential, the public body has obliged itself
2 in good faith not to disclose the information, and when the public interest
3 would suffer by the disclosure;

4 (d) Information or records of the Corrections Division, including the
5 State Board of Parole and Probation, to the extent that disclosure thereof
6 would interfere with the rehabilitation of a person in custody of the divi-
7 sion or substantially prejudice or prevent the carrying out of the functions
8 of the division, if the public interest in confidentiality clearly outweighs
9 the public interest in disclosure;

10 (e) Records, reports and other information received or compiled by
11 the Superintendent of Banks in his administration of ORS chapters 723,
12 724, 725 and 726, not otherwise required by law to be made public, to the
13 extent that the interests of lending institutions, their officers, employees
14 and customers in preserving the confidentiality of such information out-
15 weighs the public interest in disclosure;

16 (f) Reports made to or filed with the court under ORS 137.075 or
17 137.530;

18 (g) Any public records or information the disclosure of which is pro-
19 hibited by federal law or regulations;

20 (h) Public records or information the disclosure of which is prohibited
21 or restricted or otherwise made confidential or privileged under ORS
22 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540,
23 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065,
24 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430,
25 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050,
26 731.264 or 744.017; and

27 (i) Public records or information described in this section, furnished
28 by the public body originally compiling, preparing or receiving them to any
29 other public officer or public body in connection with performance of the
30 duties of the recipient, if the considerations originally giving rise to the
31 confidential or exempt nature of the public records or information remain
32 applicable.

33 (3) If any public record contains material which is not exempt under
34 subsection (1), (2) or (4) of this section, as well as material which is exempt

1 from disclosure, the public body shall separate the exempt and nonexempt
2 material and make the nonexempt material available for examination.

3 (4) (a) Upon application of any public body prior to convening of the
4 1975 regular session of the Legislative Assembly, the Governor may exempt
5 any class of public records, in addition to the classes specified in subsection
6 (1) of this section, from disclosure under this 1973 Act unless the public
7 interest requires disclosure in the particular instance, if he finds that the
8 class of public records for which exemption is sought is such that unlimited
9 public access thereto would substantially prejudice or prevent the carrying
10 out of any public function or purpose, so that the public interest in confi-
11 dentiality of such records substantially outweighs the public interest in
12 disclosure. Such exemption from disclosure shall be limited or conditioned
13 to the extent the Governor finds appropriate.

14 (b) Prior to the granting of any exemption under this subsection the
15 Governor shall hold a public hearing after notice as provided by ORS
16 183.335, or he may designate the Attorney General to hold the required
17 hearing.

18 (c) Any exemption granted under this subsection shall expire upon
19 adjournment of the 1975 regular session of the Legislative Assembly.

20 Note: Section 12 was deleted by amendment.

21 Section 13. ORS 44.040⁽²⁾ is amended to read:

"⁽²⁾, as

amended by section 6, chapter _____, Oregon Laws 1973

(Enrolled House Bill 2101,"

25 (a) A husband shall not be examined for or against his wife without
26 her consent, or a wife for or against her husband without his consent; nor
27 can either, during the marriage or afterwards, be, without the consent of
28 the other, examined as to any communication made by one to the other dur-
29 ing the marriage. The exception does not apply to a civil action, suit or
30 proceeding, by one against the other, or to a criminal action or proceeding
31 for a crime committed by one against the other.

32 (b) An attorney shall not, without the consent of his client, be examined
33 as to any communication made by the client to him, or his advice given
34 thereon, in the course of professional employment.

1 from disclosure, the public body shall separate the exempt and nonexempt
2 material and make the nonexempt material available for examination.

3 (4) (a) Upon application of any public body prior to convening of the
4 1975 regular session of the Legislative Assembly, the Governor may exempt
5 any class of public records, in addition to the classes specified in subsection
6 (1) of this section, from disclosure under this 1973 Act unless the public
7 interest requires disclosure in the particular instance, if he finds that the
8 class of public records for which exemption is sought is such that unlimited
9 public access thereto would substantially prejudice or prevent the carrying
10 out of any public function or purpose, so that the public interest in confi-
11 dentiality of such records substantially outweighs the public interest in
12 disclosure. Such exemption from disclosure shall be limited or conditioned
13 to the extent the Governor finds appropriate.

14 (b) Prior to the granting of any exemption under this subsection the
15 Governor shall hold a public hearing after notice as provided by ORS
16 183.335, or he may designate the Attorney General to hold the required
17 hearing.

18 (c) Any exemption granted under this subsection shall expire upon
19 adjournment of the 1975 regular session of the Legislative Assembly.

20 Note: Section 12 was deleted by amendment.

21 Section 13. ORS 44.040² is amended to read:

22 44.040. (1) There are particular relations in which it is the policy of
23 the law to encourage confidence, and to preserve it inviolate; therefore a
24 person cannot be examined as a witness in the following cases:

25 (a) A husband shall not be examined for or against his wife without
26 her consent, or a wife for or against her husband without his consent; nor
27 can either, during the marriage or afterwards, be, without the consent of
28 the other, examined as to any communication made by one to the other dur-
29 ing the marriage. The exception does not apply to a civil action, suit or
30 proceeding, by one against the other, or to a criminal action or proceeding
31 for a crime committed by one against the other.

32 (b) An attorney shall not, without the consent of his client, be examined
33 as to any communication made by the client to him, or his advice given
34 thereon, in the course of professional employment.

1 (c) A priest or clergyman shall not, without the consent of the person
2 making the confession, be examined as to any confession made to him in
3 his professional character, in the course of discipline enjoined by the
4 church to which he belongs.

5 (d) ³A regular physician or surgeon shall not, without th ³"Subject
to the provisions of sections 1 through 5 of Chapter
_____, Oregon Laws 1973 (Enrolled House Bill 2101), "

10 to him in official confidence, when the public interest would suffer by the
11 disclosure.] public records exempt from disclosure under this 1973 Act.

12 (f) A stenographer shall not, without the consent of his or her
13 employer, be examined as to any communication or dictation made by
14 the employer to him or her in the course of professional employment.

15 (g) A licensed professional nurse shall not, without the consent
16 of a patient who was cared for by such nurse, be examined in a civil action,
17 suit or proceeding, as to any information acquired in caring for the patient,
18 which was necessary to enable the nurse to care for the patient.

19 (h) A certified psychologist, as defined in ORS 675.010, shall
20 not, without the consent of his client, be examined as to any communication
21 made by the client to him, or his advice given thereon, in the course of his
22 professional employment.

23 (i) A ^{Cert}~~certified~~ staff member of an elementary or secondary
24 school shall not be examined in any civil action, suit or proceeding, as to
25 any conversation between the certificated staff member and a student
26 which relates to the personal affairs of the student or his family, and
27 which if disclosed would tend to damage or incriminate the student or
28 his family. Any violation of the privilege provided by this section may
29 result in the suspension of certification of the professional staff member
30 as provided in ORS 342.175 to 342.185.

31 (2) If a party to the action, suit or proceeding offers himself as a
32 witness, it is deemed a consent to the examination also of a wife, husband,
33 attorney, clergyman, physician or surgeon, stenographer, licensed profes-

1 (c) A priest or clergyman shall not, without the consent of the person
2 making the confession, be examined as to any confession made to him in
3 his professional character, in the course of discipline enjoined by the
4 church to which he belongs.

5 (d) ³A regular physician or surgeon shall not, without the consent of
6 his patient, be examined in a civil action, suit or proceeding, as to any
7 information acquired in attending the patient, which was necessary to
8 enable him to prescribe or act for the patient.

9 (e) A public officer shall not be examined as to [*communications made*
10 *to him in official confidence, when the public interest would suffer by the*
11 *disclosure.*] public records exempt from disclosure under this 1973 Act.

12 (f) A stenographer shall not, without the consent of his or her
13 employer, be examined as to any communication or dictation made by
14 the employer to him or her in the course of professional employment.

15 (g) A licensed professional nurse shall not, without the consent
16 of a patient who was cared for by such nurse, be examined in a civil action,
17 suit or proceeding, as to any information acquired in caring for the patient,
18 which was necessary to enable the nurse to care for the patient.

19 (h) A certified psychologist, as defined in ORS 675.010, shall
20 not, without the consent of his client, be examined as to any communication
21 made by the client to him, or his advice given thereon, in the course of his
22 professional employment.

23 (i) A ~~certified~~ ^{certified} staff member of an elementary or secondary
24 school shall not be examined in any civil action, suit or proceeding, as to
25 any conversation between the certificated staff member and a student
26 which relates to the personal affairs of the student or his family, and
27 which if disclosed would tend to damage or incriminate the student or
28 his family. Any violation of the privilege provided by this section may
29 result in the suspension of certification of the professional staff member
30 as provided in ORS 342.175 to 342.185.

31 (2) If a party to the action, suit or proceeding offers himself as a
32 witness, it is deemed a consent to the examination also of a wife, husband,
33 attorney, clergyman, physician or surgeon, stenographer, licensed profes-

1 sional nurse, certified psychologist or certificated staff member on the
2 same subject.

3 Section 14. ORS 59.680 is amended to read:

4 59.680. In addition to the filing of the bond required under ORS 59.670,
5 every such person shall file with the Corporation Commissioner, on or
6 before the 10th day of each month, a verified statement showing the
7 total amount of money received by him on account of the sale of outstand-
8 ing and unredeemed shares theretofore issued by him and which were in
9 force on the last day of the preceding month. This statement shall also set
10 forth the name and address of every person who during the preceding
11 month became a purchaser of any such share, together with the amount of
12 money collected thereon and paid or to be paid therefor. *[The statement*
13 *shall not be a public record, but shall be only for the information of the*
14 *Corporation Commissioner and shall not be divulged by him or by anyone*
15 *having access thereto except in court proceedings involving violation of*
16 *ORS 59.670 or 59.680.]* At the time of filing this sworn statement, such
17 person shall also deposit with the State Treasurer cash or securities speci-
18 fied as authorized investments for domestic insurance companies under the
19 insurance laws of this state, in a sum at least equal in value, when added
20 to the securities previously deposited by any such person with the State
21 Treasurer, to 50 percent of the total amount theretofore received by such
22 person on account of such shares. If at any time the securities so deposited
23 are in excess of 50 percent of the amount received on account of the then
24 outstanding and unredeemed shares such person may withdraw the excess,
25 and the State Treasurer is directed to return the excess to the person de-
26 positing it. The securities so deposited shall be for the protection of all
27 purchasers, or holders, of any such shares from the respective persons
28 making the deposit, but a deposit by any such person hereunder shall be
29 security only for the performance of his own contract as evidenced by
30 the share sold and disposed of by him. The cash or securities, together with
31 all accrued interest or dividends, shall be held and disposed of in the
32 manner provided by law in respect to cash or securities deposited with the
33 State Treasurer, and he shall be entitled to collect the fees authorized
34 pursuant to state law pertaining to and regulating title insurance.

1 Section 15. ORS 146.780 is amended to read:

2 146.780. (1) Every medical investigator who receives a report under
3 ORS 146.750 shall immediately report by telephone to the Chief Medical
4 Investigator and shall record the details of the report on a form provided
5 by the office of the Chief Medical Investigator and shall send a copy of
6 the completed form to the Chief Medical Investigator.

7 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
8 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-
9 lic inspection of public records [and public documents], records and reports
10 compiled under the provisions of this section are confidential and are not
11 accessible for public inspection.

12 Section 16. ORS 181.540 is amended to read:

13 181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170]
14 sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility
15 for public inspection of public records [and public documents], finger-
16 prints, photographs, records and reports compiled under the provisions of
17 ORS 181.510 to 181.530 are confidential and are not accessible for public
18 inspection except as provided in subsection (2) of ORS 181.065, or as ordered
19 by a court.

20 Section 17. ORS 255.015 is amended to read:

21 255.015. [(1) The provisions of ORS 192.005 to 192.170 notwithstanding,
22 voters' pamphlet material shall be available to the public as provided in
23 subsection (2) of this section.]

24 [(2)] After the 65th day prior to the date of the primary or general
25 election the Secretary of State shall, upon request, make available to any
26 person voters' pamphlet material filed pursuant to the provisions contained
27 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

28 Section 18. ORS 274.745 is amended to read:

29 274.745. (1) Records of drilling conducted by a permittee under ORS
30 274.740 shall be filed by the permittee with the State Department of Geology
31 and Mineral Industries as prescribed by ORS 520.095. [Such records shall be
32 treated as confidential for a period of five years from the date of filing
33 unless the permittee authorizes their earlier release.]

34 (2) The division may require, as a condition to the issuance of any lease

1 under ORS 274.705 to 274.860, that the lessee make available to the division,
2 or the State Department of Geology and Mineral Industries, upon request,
3 all factual and physical exploration results, logs and records resulting from
4 the operations under the lease. *[Any such factual or physical exploration*
5 *results, logs or records which the lessee is required to make available to the*
6 *division and the department shall not be open to inspection by any other*
7 *person or agency without the written consent of the lessee.]*

8 [(3) No member of the Department of Geology and Mineral Industries,
9 officer or employe thereof, or any person performing any function or work
10 assigned to him by the department, shall disclose to any person who is not
11 a member, officer, employe of the department or to any person who is not
12 performing any function or work assigned to him by the department, any
13 information obtained from the inspection of such factual or physical explor-
14 ation results, logs or records, or use such information for purposes other
15 than the administration of the functions, responsibilities, and duties vested
16 in the department by law, except upon the written consent of the permittee
17 or lessee making such information available to the department.]

18 Note: Sections 19 through 23 were deleted by amendment.

19 Section 24. ORS 522.510 is amended to read:

20 522.510. (1) The owner or operator of any well shall keep, or cause
21 to be kept, a careful and accurate log, core record and history of the drill-
22 ing of the well.

23 (2) The log referred to in subsection (1) of this section shall show the
24 character and depth of each formation encountered in the drilling of the
25 well; the amount, size and weight of casing used; and the location, depth
26 and temperature of water-bearing strata, including the temperature, chemi-
27 cal composition and other chemical and physical characteristics of fluid
28 encountered from time to time.

29 (3) The core record referred to in subsection (1) of this section shall
30 show the depth, character and fluid content of cores obtained, so far as
31 determined from the study and analysis thereof.

32 (4) The history referred to in subsection (1) of this section shall show
33 the location and amount of sidetracked casings, tools or other material;
34 the depth and quantity of cement in cement plugs; the shots of dynamite

1 or other explosives used; the results of production and other tests during
2 drilling operations and completion data.

3 (5) The log referred to in subsections (1) and (2) of this section shall
4 be kept in the local office of the owner or operator and, together with the
5 four reports of the owner or operator, shall be subject, during business
6 hours, to inspection by the board, the supervisor or his authorized deputy [;
7 *except, any log kept with respect to a prospect well*].

8 Section 25. ORS 522.520 is amended to read:

9 522.520. Each owner or operator of any well or prospect well or his
10 designated agent shall file with the supervisor a copy of the log, history
11 and core record, or any portion thereof, **promptly upon completion, or**
12 **upon the written request of the supervisor or his authorized deputy at any**
13 **time after the commencement, of the work of drilling any well [other**
14 **than a] or prospect well [upon the written request of the supervisor or**
15 **his authorized deputy] and upon the abandonment or upon suspension of**
16 **operations conducted with respect to any well for a period of at least six**
17 **months.** The request shall be signed by the supervisor or the deputy and
18 served upon such owner, operator or agent either personally or by mail-
19 ing a copy of the request by [*registered*] certified mail to the last-known
20 post-office address of such owner, operator or agent.

21 Section 26. ORS 561.265 is amended to read:

22 561.265. (1) The department upon not less than three days' notice in
23 writing is authorized to inspect and audit, during regular business hours,
24 necessary and applicable books and records of any person required by law
25 to report or pay fees or moneys to the department. Such inspection is for
26 the purpose of determining whether proper fees have been paid.

27 (2) "Fees" as used in this section includes fees due the department
28 by a person, each month, year, or other fixed time or period, the amount
29 of which is based upon the quantity, volume, weight or other measurement
30 of some article, product or commodity and such fees to be used by the
31 department in carrying out or enforcing a law under its jurisdiction. "Fees"
32 does not include a license fee, the exact amount of which is fixed by law.

33 [(3) *Information obtained by the department under the provisions of*
34 *this section shall not be a public record.*]

1 Section 27. ORS 573.350 is amended to read:

2 573.350. (1) Each person responsible for the payment of the fees
3 required by ORS 573.340 shall file a report with the department on October
4 1, January 1, April 1 and July 1 of each year in which payment of the
5 fees is required of the number of pounds of such herbicides sold, used or
6 consumed during the three calendar months immediately preceding the
7 date the report is due. The proper poundage fee shall be remitted with the
8 report. The person required to file the report and pay the fee shall have
9 a 15-day period of grace, immediately following the day the report and
10 payment are due, to file the report and pay the fee.

11 (2) No user or consumer of such herbicides is required to file a report
12 if the herbicides have been purchased from a manufacturer, jobber, broker
13 or wholesaler who is responsible for the payment of the fee on poundage
14 sold or from a retailer doing business in this state.

15 [(3) The report required by this section shall not be a public record;
16 however, the board or the department may prepare and publish from its
17 records such statistics and information as it deems advisable and which
18 will not reveal any confidential information.]

Insert (3) →
19 Section 28. ORS 547.120 is amended to read:

Section 27a. If Senate Bill 106 (1973 regular session)
becomes law, on the effective date of chapter _____, Oregon
Laws 1973 (Enrolled Senate Bill 106), section 27 of this Act
is repealed."

24 its proceedings [, which shall be open to the inspection of all owners of
25 real estate of the district, as well as to all other interested persons]. The
26 board shall report to the landowners at the annual meeting held under
27 the provision of ORS 547.110 what work has been done, either by the
28 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
29 if the secretary is a member of the board he shall be entitled to compen-
30 sation as provided for in ORS 547.125.

31 Section 29. ORS 576.024 is amended to read:

32 576.024. (1) It is necessary for the economy of this state, the livestock
33 industry and the welfare of the consuming public that the department ob-
34 tain statistical information for economic studies of the livestock industry

1 Section 27. ORS 573.350 is amended to read:

2 573.350. (1) Each person responsible for the payment of the fees
3 required by ORS 573.340 shall file a report with the department on October
4 1, January 1, April 1 and July 1 of each year in which payment of the
5 fees is required of the number of pounds of such herbicides sold, used or
6 consumed during the three calendar months immediately preceding the
7 date the report is due. The proper poundage fee shall be remitted with the
8 report. The person required to file the report and pay the fee shall have
9 a 15-day period of grace, immediately following the day the report and
10 payment are due, to file the report and pay the fee.

11 (2) No user or consumer of such herbicides is required to file a report
12 if the herbicides have been purchased from a manufacturer, jobber, broker
13 or wholesaler who is responsible for the payment of the fee on poundage
14 sold or from a retailer doing business in this state.

15 [(3) *The report required by this section shall not be a public record;*
16 *however, the board or the department may prepare and publish from its*
17 *records such statistics and information as it deems advisable and which*
18 *will not reveal any confidential information.*]

Insert 3 → 19 Section 28. ORS 547.120 is amended to read:

20 547.120. The board of supervisors immediately after its election shall
21 choose one of its number president of the board, and elect some suitable
22 person secretary, who may or may not be a member of the board. The
23 board shall adopt a seal with a suitable design, and shall keep a record of all
24 its proceedings [, *which shall be open to the inspection of all owners of*
25 *real estate of the district, as well as to all other interested persons*]. The
26 board shall report to the landowners at the annual meeting held under
27 the provision of ORS 547.110 what work has been done, either by the
28 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
29 if the secretary is a member of the board he shall be entitled to compen-
30 sation as provided for in ORS 547.125.

31 Section 29. ORS 576.024 is amended to read:

32 576.024. (1) It is necessary for the economy of this state, the livestock
33 industry and the welfare of the consuming public that the department ob-
34 tain statistical information for economic studies of the livestock industry

1 including the volume of production of livestock in this state; the chan-
2 nels into which such livestock is marketed; the total consumption of meat
3 in this state; the types and quantities consumed and the sources thereof;
4 and such other information as is pertinent to reveal additional potential
5 markets for livestock produced in this state.

6 (2) In order to carry out and maintain this continuing study, the de-
7 partment is authorized during business hours to inspect the records of
8 places or businesses which handle, store or sell meat animals, or meat as
9 defined in ORS 619.610. *[Such data and information shall not be a public*
10 *record. The department however may release or use such data or informa-*
11 *tion:]*

12 *[(a) When necessary in preparation or publishing statistics as are*
13 *necessary to carry out the purpose and intent of this section but which*
14 *shall not reveal any confidential data or information of the identity of*
15 *specific or particular places of business or establishments.]*

16 *[(b) When necessary in carrying out the responsibilities of the de-*
17 *partment under laws under its supervision and jurisdiction.]*

18 (3) The department, after public hearing under ORS chapter 183, may
19 require periodic reporting from the places or businesses described in this
20 section and require the furnishing to the department of the data or infor-
21 mation which may be needed in continuing the comprehensive study as
22 authorized in this section.

23 Section 30. ORS 576.395 is amended to read:

24 576.395. *[(1)]* The commission shall keep accurate books, records and
25 accounts of all its dealings which shall be open to inspection and audit by
26 the Secretary of State.

27 *[(2) The amount of assessment moneys paid to the commission and*
28 *reports or information filed with the commission by a first purchaser or*
29 *producer under ORS 576.051 to 576.584 are not a public record.]*

30 Section 31. ORS 577.826 is amended to read:

31 577.826. (1) After a petition is received or a written request is re-
32 ceived from the council as authorized by ORS 577.810, all persons eligible to
33 vote may vote in the referendum provided they register with the depart-
34 ment their names and such other pertinent information as is required.

1 The department shall provide a period of not less than 20 days during
2 which such persons may register. [*Only the names and addresses of the*
3 *persons who register are public record.*] The department thereafter shall
4 compile and file the list of persons eligible to vote, in the Salem office of
5 the department and may publish such list as it deems necessary for the
6 benefit of producers.

7 (2) Within 60 days after the list is filed, the department shall conduct
8 the referendum.

9 Section 32. ORS 578.190 is amended to read:

10 578.190. [(1)] The commission shall keep accurate books, records and
11 accounts of all its dealings which shall be open to inspection and audit by
12 the Secretary of State.

13 [(2) *The amount of assessment moneys paid to the commission and*
14 *reports or information filed with the commission by a first purchaser or*
15 *grower under this chapter are not a public record.*]

16 Section 33. ORS 579.185 is amended to read:

17 579.185. [(1)] The commission shall keep accurate books, records and
18 accounts of all its dealings which shall be open to inspection and audit
19 by the Secretary of State.

20 [(2) *The amount of assessment moneys paid to the commission and*
21 *reports or information filed with the commission by a first purchaser or*
22 *grower under this chapter are not a public record.*]

23 Section 33a. ORS 656.702 is amended to read:

24 656.702. The records of the [board and the] State Accident Insurance
25 Fund, excepting [payrolls and confidential reports] employer account rec-
26 ords and dividend schedules and formulas, shall be open to public inspec-
27 tion. The accident experience records of the fund [for periods prior and
28 subsequent to January 1, 1966,] shall be available to a bona fide rating
29 organization to assist in making workmen's compensation rates providing
30 any costs involved in making the records available shall be borne by the
31 rating organization. Accident experience records of direct responsibility
32 employers insuring with insurers issuing guaranty contracts under sub-
33 section (1) of ORS 656.405 shall also be available on the same terms to
34 assist in making such rates.

1 **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
2 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580,
3 697.220, 697.725 and 721.050 are repealed.

4 **SECTION 35.** This Act being necessary for the immediate preservation
5 of the public peace, health and safety, an emergency is declared to exist,
6 and this Act takes effect July 1, 1973.

RE-ENGROSSED
House Bill 2157

Ordered by the Senate June 23
(Including Amendments by Joint Special Committee on
Professional Responsibility May 17 and by Senate June 23)

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST,
MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS,
WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request
of the Attorney General)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney fees to successful applicants.

Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1

A BILL FOR AN ACT

2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, 522.510, 522.520, 547.120, 561.265, 573.350, 576.024, 576.395, 577.826,
5 578.190, 579.185 and 656.702; repealing ORS 128.700, 192.010, 192.020,
6 192.030, 240.110, 240.120, 399.220, 471.785, 508.545, 522.530, 522.540, 576.017,
7 583.464, 619.825, 696.580, 697.220, 697.725 and 721.050; and declaring an
8 emergency.

9 **Be It Enacted by the People of the State of Oregon:**

10 **SECTION 1.** Sections 2 to 11 of this Act are added to and made a part
11 of ORS chapter 192.

12 **SECTION 2.** As used in this 1973 Act:

13 (1) "Public body" includes every state officer, agency, department,
14 division, bureau, board and commission; every county and city governing
15 body, school district, special district, municipal corporation, and any board,
16 department, commission, council, or agency thereof; and any other public
17 agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

25 (5) "Writing" means handwriting, typewriting, printing, photostating,
26 photographing and every means of recording, including letters, words,
27 pictures, sounds, or symbols, or combination thereof, and all papers, maps,
28 magnetic or paper tapes, photographic films and prints, magnetic or punched
29 cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

33 **SECTION 4.** The custodian of any public records, unless otherwise
34 expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect shall give him, on demand, a certified copy of it,
9 if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy.

11 (2) The public body may establish fees reasonably calculated to re-
12 imburse it for its actual cost in making such records available.

13 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
14 denied the right to inspect or to receive a copy of any public record of a
15 state agency may petition the Attorney General to review the public record
16 to determine if it may be withheld from public inspection. The burden is
17 on the agency to sustain its action. The Attorney General shall issue his
18 order denying or granting the petition, or denying it in part and granting
19 it in part, within three business days from the day he receives the petition.

20 (2) If the Attorney General grants the petition and orders the state
21 agency to disclose the record, or if he grants the petition in part and
22 orders the state agency to disclose a portion of the record, the state agency
23 may institute proceedings for injunctive or declaratory relief in the Circuit
24 Court for Marion County. If the Attorney General denies the petition in
25 whole or in part, or if the state agency continues to withhold the record or
26 a part of it notwithstanding an order to disclose by the Attorney General,
27 the person seeking disclosure may institute such proceedings.

28 (3) The Attorney General shall serve as counsel for the state agency
29 in a suit filed under subsection (2) of this section if the suit arises out of
30 a determination by him that the public record should not be disclosed, or
31 that a part of the public record should not be disclosed if the state agency
32 has fully complied with his order requiring disclosure of another part or
33 parts of the public record, and in no other case. In any case in which the

1 Attorney General is prohibited from serving as counsel for the state agency,
2 the agency may retain special counsel.

3 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
4 case of a person denied the right to inspect or receive a copy of any public
5 record of a public body other than a state agency, except that in such case
6 the district attorney of the county in which the public body is located, or if
7 it is located in more than one county the district attorney of the county
8 in which the administrative offices of the public body are located, shall
9 carry out the functions of the Attorney General, and any suit filed shall be
10 filed in the circuit court for such county, and except that the district attor-
11 ney shall not serve as counsel for the public body, in the cases permitted
12 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
13 serves as counsel for it.

14 **SECTION 8.** In any case in which a person is denied the right to inspect
15 or to receive a copy of a public record in the custody of an elected official,
16 or in the custody of any other person but as to which an elected official
17 claims the right to withhold disclosure, no petition to require disclosure
18 may be filed with the Attorney General or district attorney, or if a petition
19 is filed it shall not be considered by the Attorney General or district attor-
20 ney after a claim of right to withhold disclosure by an elected official. In
21 such case a person denied the right to inspect or to receive a copy of a pub-
22 lic record may institute proceedings for injunctive or declaratory relief
23 in the appropriate circuit court, as specified in section 6 or 7 of this 1973
24 Act, and the Attorney General or district attorney may upon request serve
25 or decline to serve, in his discretion, as counsel in such suit for an elected
26 official for which he ordinarily serves as counsel. Nothing in this section
27 shall preclude an elected official from requesting advice from the Attorney
28 General or a district attorney as to whether a public record should be
29 disclosed.

30 **SECTION 9.** (1) In any suit filed under sections 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

1 court, on its own motion, may view the documents in controversy in
2 camera before reaching a decision. Any noncompliance with the order of
3 the court may be punished as contempt of court.

4 (2) Except as to causes the court considers of greater importance, pro-
5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
6 docket over all other causes and shall be assigned for hearing and trial at
7 the earliest practicable date and expedited in every way.

8 (3) If a person seeking the right to inspect or to receive a copy of a
9 public record prevails in such suit, he shall be awarded his reasonable
10 attorney fees. If such person prevails in part, the court may in its dis-
11 cretion award him his reasonable attorney fees, or an appropriate portion
12 thereof.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
14 torney requesting him to order a public record to be made available for
15 inspection or to be produced shall be in substantially the following form,
16 or in a form containing the same information:

17 _____
18 _____ (date)
19 I (we), _____, the undersigned, request the
20 _____ (name(s))
21 Attorney General (or District Attorney of _____ County) to
22 order _____ and its employees to (make
23 _____ (name of governmental body)
24 available for inspection) (produce a copy or copies of) the following records:

25 1. _____
26 _____ (Name or description of record)

27 2. _____
28 _____ (Name or description of record)

29 I (we) asked to inspect and/or copy these records on _____
30 _____ (date)

31 at _____ The request was denied by the follow-
32 _____ (address)
33 ing person(s):

34 1. _____
35 _____ (Name of public officer or employee; title or position, if known)

36 2. _____
37 _____ (Name of public officer or employee; title or position, if known)

38 _____
39 _____ (Signature(s))

40 _____
41 This form should be delivered or mailed to the Attorney General's office
42 in Salem, or the district attorney's office in the county courthouse.

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 (a) Records of a public body pertaining to litigation to which the public
13 body is a party if the complaint has been filed, or if the complaint has not
14 been filed, if the public body shows that such litigation is reasonably
15 likely to occur. This exemption does not apply to litigation which has
16 been concluded, and nothing in this paragraph shall limit any right or
17 opportunity granted by discovery or deposition statutes to a party to
18 litigation or potential litigation;

19 (b) Trade secrets. "Trade secrets," as used in this section, may include,
20 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
21 compound, procedure, production data, or compilation of information which
22 is not patented, which is known only to certain individuals within a
23 commercial concern who are using it to fabricate, produce, or compound an
24 article of trade or a service or to locate minerals or other substances, having
25 commercial value, and which gives its user an opportunity to obtain a
26 business advantage over competitors who do not know or use it;

27 (c) Investigatory information compiled for criminal law purposes, ex-
28 cept that the record of an arrest or the report of a crime shall not be con-
29 fidential unless and only so long as there is a clear need in a particular case
30 to delay disclosure in the course of an investigation. Nothing in this para-
31 graph shall limit any right constitutionally guaranteed, or granted by
32 statute, to disclosure or discovery in criminal cases;

33 (d) Test questions, scoring keys, and other examination data used to
34 administer a licensing examination, examination for employment, or aca-

1 demic examination before the examination is given and if the examination
2 is to be used again;

3 (e) Information consisting of production records, sale or purchase
4 records or catch records, or similar business records of a private concern or
5 enterprise, required by law to be submitted to or inspected by a govern-
6 mental body to allow it to determine fees or assessments payable or to
7 establish production quotas, and the amounts of such fees or assessments
8 payable or paid, to the extent that such information is in a form
9 which would permit identification of the individual concern or enterprise.
10 Nothing in this paragraph shall limit the use which can be made of such
11 information for regulatory purposes or its admissibility in any enforcement
12 proceeding;

13 (f) Information relating to the appraisal of real estate prior to its
14 acquisition;

15 (g) The names and signatures of employees who sign authorization
16 cards or petitions for the purpose of requesting representation or decerti-
17 fication elections; and

18 (h) Investigatory information relating to any complaint filed under
19 ORS 659.040 or 659.045, until such time as the complaint is resolved under
20 ORS 659.050, or a final administrative determination is made under ORS
21 659.060.

22 (2) The following public records are exempt from disclosure under
23 this 1973 Act:

24 (a) Communications within a public body or between public bodies
25 of an advisory nature to the extent that they cover other than purely
26 factual materials and are preliminary to any final agency determination
27 of policy or action. This exemption shall not apply unless the public body
28 shows that in the particular instance the public interest in encouraging
29 frank communication between officials and employees of public bodies
30 clearly outweighs the public interest in disclosure;

31 (b) Information of a personal nature such as that kept in a personal,
32 medical or similar file, if the public disclosure thereof would constitute
33 an unreasonable invasion of privacy, unless the public interest by clear
34 and convincing evidence requires disclosure in the particular instance.

1 The party seeking disclosure shall have the burden of showing that public
2 disclosure would not constitute an unreasonable invasion of privacy;

3 (c) Information submitted to a public body in confidence and not
4 otherwise required by law to be submitted, where such information should
5 reasonably be considered confidential, the public body has obliged itself
6 in good faith not to disclose the information, and when the public interest
7 would suffer by the disclosure;

8 (d) Information or records of the Corrections Division, including the
9 State Board of Parole and Probation, to the extent that disclosure thereof
10 would interfere with the rehabilitation of a person in custody of the divi-
11 sion or substantially prejudice or prevent the carrying out of the functions
12 of the division, if the public interest in confidentiality clearly outweighs
13 the public interest in disclosure;

14 (e) Records, reports and other information received or compiled by
15 the Superintendent of Banks in his administration of ORS chapters 723,
16 724, 725 and 726, not otherwise required by law to be made public, to the
17 extent that the interests of lending institutions, their officers, employees
18 and customers in preserving the confidentiality of such information out-
19 weighs the public interest in disclosure;

20 (f) Reports made to or filed with the court under ORS 137.075 or
21 137.530;

22 (g) Any public records or information the disclosure of which is pro-
23 hibited by federal law or regulations;

24 (h) Public records or information the disclosure of which is prohibited
25 or restricted or otherwise made confidential or privileged under ORS
26 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540,
27 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065,
28 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430,
29 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050,
30 731.264 or 744.017; and

31 (i) Public records or information described in this section, furnished
32 by the public body originally compiling, preparing or receiving them to any
33 other public officer or public body in connection with performance of the
34 duties of the recipient, if the considerations originally giving rise to the

1 confidential or exempt nature of the public records or information remain
2 applicable.

3 (3) If any public record contains material which is not exempt under
4 subsection (1), (2) or (4) of this section, as well as material which is exempt
5 from disclosure, the public body shall separate the exempt and nonexempt
6 material and make the nonexempt material available for examination.

7 (4) (a) Upon application of any public body prior to convening of the
8 1975 regular session of the Legislative Assembly, the Governor may exempt
9 any class of public records, in addition to the classes specified in subsection
10 (1) of this section, from disclosure under this 1973 Act unless the public
11 interest requires disclosure in the particular instance, if he finds that the
12 class of public records for which exemption is sought is such that unlimited
13 public access thereto would substantially prejudice or prevent the carrying
14 out of any public function or purpose, so that the public interest in confi-
15 dentiality of such records substantially outweighs the public interest in
16 disclosure. Such exemption from disclosure shall be limited or conditioned
17 to the extent the Governor finds appropriate.

18 (b) Prior to the granting of any exemption under this subsection the
19 Governor shall hold a public hearing after notice as provided by ORS
20 183.335, or he may designate the Attorney General to hold the required
21 hearing.

22 (c) Any exemption granted under this subsection shall expire upon
23 adjournment of the 1975 regular session of the Legislative Assembly.

24 **Note:** Section 12 was deleted by amendment.

25 Section 13. ORS 44.040, as amended by section 6, chapter —, Oregon
26 Laws 1973 (Enrolled House Bill 2101), is amended to read:

27 44.040. (1) There are particular relations in which it is the policy of
28 the law to encourage confidence, and to preserve it inviolate; therefore a
29 person cannot be examined as a witness in the following cases:

30 (a) A husband shall not be examined for or against his wife without
31 her consent, or a wife for or against her husband without his consent; nor
32 can either, during the marriage or afterwards, be, without the consent of
33 the other, examined as to any communication made by one to the other dur-
34 ing the marriage. The exception does not apply to a civil action, suit or

1 proceeding, by one against the other, or to a criminal action or proceeding
2 for a crime committed by one against the other.

3 (b) An attorney shall not, without the consent of his client, be examined
4 as to any communication made by the client to him, or his advice given
5 thereon, in the course of professional employment.

6 (c) A priest or clergyman shall not, without the consent of the person
7 making the confession, be examined as to any confession made to him in
8 his professional character, in the course of discipline enjoined by the
9 church to which he belongs.

10 (d) Subject to the provisions of sections 1 to 5 of [*this 1973 Act*,] chap-
11 ter —, **Oregon Laws 1973 (Enrolled House Bill 2101)**, a regular physician or
12 surgeon shall not, without the consent of his patient, be examined in a
13 civil action, suit or proceeding, as to any information acquired in attending
14 the patient, which was necessary to enable him to prescribe or act for the
15 patient.

16 (e) A public officer shall not be examined as to [*communications made*
17 *to him in official confidence, when the public interest would suffer by the*
18 *disclosure*.] **public records exempt from disclosure under this 1973 Act.**

19 (f) A stenographer shall not, without the consent of his or her
20 employer, be examined as to any communication or dictation made by
21 the employer to him or her in the course of professional employment.

22 (g) A licensed professional nurse shall not, without the consent
23 of a patient who was cared for by such nurse, be examined in a civil action,
24 suit or proceeding, as to any information acquired in caring for the patient,
25 which was necessary to enable the nurse to care for the patient.

26 (h) A certified psychologist, as defined in ORS 675.010, shall
27 not, without the consent of his client, be examined as to any communication
28 made by the client to him, or his advice given thereon, in the course of his
29 professional employment.

30 (i) A certificated staff member of an elementary or secondary school
31 shall not be examined in any civil action, suit or proceeding, as to
32 any conversation between the certificated staff member and a student
33 which relates to the personal affairs of the student or his family, and
34 which if disclosed would tend to damage or incriminate the student or

1 his family. Any violation of the privilege provided by this section may
2 result in the suspension of certification of the professional staff member
3 as provided in ORS 342.175 to 342.185.

4 (2) If a party to the action, suit or proceeding offers himself as a
5 witness, it is deemed a consent to the examination also of a wife, husband,
6 attorney, clergyman, physician or surgeon, stenographer, licensed profes-
7 sional nurse, certified psychologist or certificated staff member on the
8 same subject.

9 Section 14. ORS 59.680 is amended to read:

10 59.680. In addition to the filing of the bond required under ORS 59.670,
11 every such person shall file with the Corporation Commissioner, on or
12 before the 10th day of each month, a verified statement showing the
13 total amount of money received by him on account of the sale of outstand-
14 ing and unredeemed shares theretofore issued by him and which were in
15 force on the last day of the preceding month. This statement shall also set
16 forth the name and address of every person who during the preceding
17 month became a purchaser of any such share, together with the amount of
18 money collected thereon and paid or to be paid therefor. [*The statement*
19 *shall not be a public record, but shall be only for the information of the*
20 *Corporation Commissioner and shall not be divulged by him or by anyone*
21 *having access thereto except in court proceedings involving violation of*
22 *ORS 59.670 or 59.680.*] At the time of filing this sworn statement, such
23 person shall also deposit with the State Treasurer cash or securities speci-
24 fied as authorized investments for domestic insurance companies under the
25 insurance laws of this state, in a sum at least equal in value, when added
26 to the securities previously deposited by any such person with the State
27 Treasurer, to 50 percent of the total amount theretofore received by such
28 person on account of such shares. If at any time the securities so deposited
29 are in excess of 50 percent of the amount received on account of the then
30 outstanding and unredeemed shares such person may withdraw the excess,
31 and the State Treasurer is directed to return the excess to the person de-
32 positing it. The securities so deposited shall be for the protection of all
33 purchasers, or holders, of any such shares from the respective persons
34 making the deposit, but a deposit by any such person hereunder shall be

1 security only for the performance of his own contract as evidenced by
2 the share sold and disposed of by him. The cash or securities, together with
3 all accrued interest or dividends, shall be held and disposed of in the
4 manner provided by law in respect to cash or securities deposited with the
5 State Treasurer, and he shall be entitled to collect the fees authorized
6 pursuant to state law pertaining to and regulating title insurance.

7 Section 15. ORS 146.780 is amended to read:

8 146.780. (1) Every medical investigator who receives a report under
9 ORS 146.750 shall immediately report by telephone to the Chief Medical
10 Investigator and shall record the details of the report on a form provided
11 by the office of the Chief Medical Investigator and shall send a copy of
12 the completed form to the Chief Medical Investigator.

13 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
14 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-
15 lic inspection of public records [and public documents], records and reports
16 compiled under the provisions of this section are confidential and are not
17 accessible for public inspection.

18 Section 16. ORS 181.540 is amended to read:

19 181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170]
20 sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility
21 for public inspection of public records [and public documents], finger-
22 prints, photographs, records and reports compiled under the provisions of
23 ORS 181.510 to 181.530 are confidential and are not accessible for public
24 inspection except as provided in subsection (2) of ORS 181.065, or as ordered
25 by a court.

26 Section 17. ORS 255.015 is amended to read:

27 255.015. [(1) The provisions of ORS 192.005 to 192.170 notwithstanding,
28 voters' pamphlet material shall be available to the public as provided in
29 subsection (2) of this section.]

30 [(2)] After the 65th day prior to the date of the primary or general
31 election the Secretary of State shall, upon request, make available to any
32 person voters' pamphlet material filed pursuant to the provisions contained
33 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

1 Section 18. ORS 274.745 is amended to read:

2 274.745. (1) Records of drilling conducted by a permittee under ORS
3 274.740 shall be filed by the permittee with the State Department of Geology
4 and Mineral Industries as prescribed by ORS 520.095. [*Such records shall be*
5 *treated as confidential for a period of five years from the date of filing*
6 *unless the permittee authorizes their earlier release.*]

7 (2) The division may require, as a condition to the issuance of any lease
8 under ORS 274.705 to 274.860, that the lessee make available to the division,
9 or the State Department of Geology and Mineral Industries, upon request,
10 all factual and physical exploration results, logs and records resulting from
11 the operations under the lease. [*Any such factual or physical exploration*
12 *results, logs or records which the lessee is required to make available to the*
13 *division and the department shall not be open to inspection by any other*
14 *person or agency without the written consent of the lessee.*]

15 [(3) No member of the Department of Geology and Mineral Industries,
16 officer or employe thereof, or any person performing any function or work
17 assigned to him by the department, shall disclose to any person who is not
18 a member, officer, employe of the department or to any person who is not
19 performing any function or work assigned to him by the department, any
20 information obtained from the inspection of such factual or physical explor-
21 ation results, logs or records, or use such information for purposes other
22 than the administration of the functions, responsibilities, and duties vested
23 in the department by law, except upon the written consent of the permittee
24 or lessee making such information available to the department.]

25 Note: Sections 19 through 23 were deleted by amendment.

26 Section 24. ORS 522.510 is amended to read:

27 522.510. (1) The owner or operator of any well shall keep, or cause
28 to be kept, a careful and accurate log, core record and history of the drill-
29 ing of the well.

30 (2) The log referred to in subsection (1) of this section shall show the
31 character and depth of each formation encountered in the drilling of the
32 well; the amount, size and weight of casing used; and the location, depth
33 and temperature of water-bearing strata, including the temperature, chemi-

1 cal composition and other chemical and physical characteristics of fluid
2 encountered from time to time.

3 (3) The core record referred to in subsection (1) of this section shall
4 show the depth, character and fluid content of cores obtained, so far as
5 determined from the study and analysis thereof.

6 (4) The history referred to in subsection (1) of this section shall show
7 the location and amount of sidetracked casings, tools or other material;
8 the depth and quantity of cement in cement plugs; the shots of dynamite
9 or other explosives used; the results of production and other tests during
10 drilling operations and completion data.

11 (5) The log referred to in subsections (1) and (2) of this section shall
12 be kept in the local office of the owner or operator and, together with the
13 tour reports of the owner or operator, shall be subject, during business
14 hours, to inspection by the board, the supervisor or his authorized deputy [
15 *except, any log kept with respect to a prospect well*].

16 Section 25. ORS 522.520 is amended to read:

17 522.520. Each owner or operator of any well or **prospect well** or his
18 designated agent shall file with the supervisor a copy of the log, history
19 and core record, or any portion thereof, **promptly upon completion, or**
20 **upon the written request of the supervisor or his authorized deputy** at any
21 time after the commencement, of the work of drilling any well [*other*
22 *than a*] or prospect well [*upon the written request of the supervisor or*
23 *his authorized deputy*] and **upon the abandonment or upon suspension of**
24 **operations conducted with respect to any well for a period of at least six**
25 **months**. The request shall be signed by the supervisor or the deputy and
26 served **upon** such owner, operator or agent either personally or by mail-
27 ing a copy of the request by [*registered*] **certified** mail to the last-known
28 post-office address of such owner, operator or agent.

29 Section 26. ORS 561.265 is amended to read:

30 561.265. (1) The department upon not less than three days' notice in
31 writing is authorized to inspect and audit, during regular business hours,
32 necessary and applicable books and records of any person required by law
33 to report or pay fees or moneys to the department. Such inspection is for
34 the purpose of determining whether proper fees have been paid.

1 (2) "Fees" as used in this section includes fees due the department
2 by a person, each month, year, or other fixed time or period, the amount
3 of which is based upon the quantity, volume, weight or other measurement
4 of some article, product or commodity and such fees to be used by the
5 department in carrying out or enforcing a law under its jurisdiction. "Fees"
6 does not include a license fee, the exact amount of which is fixed by law.

7 [(3) *Information obtained by the department under the provisions of*
8 *this section shall not be a public record.*]

9 Section 27. ORS 573.350 is amended to read:

10 573.350. (1) Each person responsible for the payment of the fees
11 required by ORS 573.340 shall file a report with the department on October
12 1, January 1, April 1 and July 1 of each year in which payment of the
13 fees is required of the number of pounds of such herbicides sold, used or
14 consumed during the three calendar months immediately preceding the
15 date the report is due. The proper poundage fee shall be remitted with the
16 report. The person required to file the report and pay the fee shall have
17 a 15-day period of grace, immediately following the day the report and
18 payment are due, to file the report and pay the fee.

19 (2) No user or consumer of such herbicides is required to file a report
20 if the herbicides have been purchased from a manufacturer, jobber, broker
21 or wholesaler who is responsible for the payment of the fee on poundage
22 sold or from a retailer doing business in this state.

23 [(3) *The report required by this section shall not be a public record;*
24 *however, the board or the department may prepare and publish from its*
25 *records such statistics and information as it deems advisable and which*
26 *will not reveal any confidential information.*]

27 Section 28. ORS 547.120 is amended to read:

28 547.120. The board of supervisors immediately after its election shall
29 choose one of its number president of the board, and elect some suitable
30 person secretary, who may or may not be a member of the board. The
31 board shall adopt a seal with a suitable design, and shall keep a record of all
32 its proceedings [, *which shall be open to the inspection of all owners of*
33 *real estate of the district, as well as to all other interested persons*]. The
34 board shall report to the landowners at the annual meeting held under

1 the provision of ORS 547.110 what work has been done, either by the
2 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
3 if the secretary is a member of the board he shall be entitled to compen-
4 sation as provided for in ORS 547.125.

5 Section 29. ORS 576.024 is amended to read:

6 576.024. (1) It is necessary for the economy of this state, the livestock
7 industry and the welfare of the consuming public that the department ob-
8 tain statistical information for economic studies of the livestock industry
9 including the volume of production of livestock in this state; the chan-
10 nels into which such livestock is marketed; the total consumption of meat
11 in this state; the types and quantities consumed and the sources thereof;
12 and such other information as is pertinent to reveal additional potential
13 markets for livestock produced in this state.

14 (2) In order to carry out and maintain this continuing study, the de-
15 partment is authorized during business hours to inspect the records of
16 places or businesses which handle, store or sell meat animals, or meat as
17 defined in ORS 619.610. *[Such data and information shall not be a public*
18 *record. The department however may release or use such data or informa-*
19 *tion:]*

20 *[(a) When necessary in preparation or publishing statistics as are*
21 *necessary to carry out the purpose and intent of this section but which*
22 *shall not reveal any confidential data or information of the identity of*
23 *specific or particular places of business or establishments.]*

24 *[(b) When necessary in carrying out the responsibilities of the de-*
25 *partment under laws under its supervision and jurisdiction.]*

26 (3) The department, after public hearing under ORS chapter 183, may
27 require periodic reporting from the places or businesses described in this
28 section and require the furnishing to the department of the data or infor-
29 mation which may be needed in continuing the comprehensive study as
30 authorized in this section.

31 Section 30. ORS 576.395 is amended to read:

32 576.395. *[(1)]* The commission shall keep accurate books, records and
33 accounts of all its dealings which shall be open to inspection and audit by
34 the Secretary of State.

1 *[(2) The amount of assessment moneys paid to the commission and*
2 *reports or information filed with the commission by a first purchaser or*
3 *producer under ORS 576.051 to 576.584 are not a public record.]*

4 Section 31. ORS 577.826 is amended to read:

5 577.826. (1) After a petition is received or a written request is re-
6 ceived from the council as authorized by ORS 577.810, all persons eligible to
7 vote may vote in the referendum provided they register with the depart-
8 ment their names and such other pertinent information as is required.
9 The department shall provide a period of not less than 20 days during
10 which such persons may register. *[Only the names and addresses of the*
11 *persons who register are public record.]* The department thereafter shall
12 compile and file the list of persons eligible to vote, in the Salem office of
13 the department and may publish such list as it deems necessary for the
14 benefit of producers.

15 (2) Within 60 days after the list is filed, the department shall conduct
16 the referendum.

17 Section 32. ORS 578.190 is amended to read:

18 578.190. *[(1)]* The commission shall keep accurate books, records and
19 accounts of all its dealings which shall be open to inspection and audit by
20 the Secretary of State.

21 *[(2) The amount of assessment moneys paid to the commission and*
22 *reports or information filed with the commission by a first purchaser or*
23 *grower under this chapter are not a public record.]*

24 Section 33. ORS 579.185 is amended to read:

25 579.185. *[(1)]* The commission shall keep accurate books, records and
26 accounts of all its dealings which shall be open to inspection and audit
27 by the Secretary of State.

28 *[(2) The amount of assessment moneys paid to the commission and*
29 *reports or information filed with the commission by a first purchaser or*
30 *grower under this chapter are not a public record.]*

31 Section 33a. ORS 656.702 is amended to read:

32 656.702. The records of the *[board and the]* State Accident Insurance
33 Fund, excepting *[payrolls and confidential reports]* **employer account rec-**
34 **ords and dividend schedules and formulas**, shall be open to public inspec-

1 tion. The accident experience records of the fund [*for periods prior and*
2 *subsequent to January 1, 1966,*] shall be available to a bona fide rating
3 organization to assist in making workmen's compensation rates providing
4 any costs involved in making the records available shall be borne by the
5 rating organization. Accident experience records of direct responsibility
6 employers insuring with insurers issuing guaranty contracts under sub-
7 section (1) of ORS 656.405 shall also be available on the same terms to
8 assist in making such rates.

9 **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
10 399.220, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 696.580,
11 697.220, 697.725 and 721.050 are repealed.

12 **SECTION 35.** This Act being necessary for the immediate preservation
13 of the public peace, health and safety, an emergency is declared to exist,
14 and this Act takes effect July 1, 1973.

Committee Report Review - Engrossed and Enrolled Bills Unit

Date May 17, 1973

We have examined the report of the House Committee on Joint Special Professional Responsibility, dated May 17, 1973, on measure HB 2157 (Open Records), and, pursuant to House Rule 8.20(2), attest that the measure in the form reported out is accurate in form and style according to the **Form and Style Manual for Legislative Measures**.

Charlotte Holman

For Engrossed and Enrolled Bills Unit

Engrossed HB 2157

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney fees to successful applicants.

[Requires meetings of public boards, bureaus, commissions, committees and subcommittees to be open to public unless such meetings relate to labor negotiations, individual personnel matters or preliminary negotiations on matters of trade or commerce where public body is in competition with public body in other state or nation.] Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

SENATE COMMITTEE REPORT

Salem, Oregon June 26, 1973

Mr. President:

JOINT SPECIAL

Your Committee on PROFESSIONAL RESPONSIBILITY to whom was referred

House Bill 2157 (Re-engrossed), having had the same under consideration,

respectfully report it back with the recommendation that it:

☐ Do pass:

☒ **XXXX** Do pass with amendments:

☐ Be adopted:

☐ Be adopted with amendments:

☐ Do pass with amendments to the printed engrossed bill.

☐ (Referred to Committee on Ways and Means by prior reference)

☐ (Other—specify)

PROPOSED AMENDMENTS TO RE-ENGROSSED HOUSE BILL 2157

ARE ATTACHED.

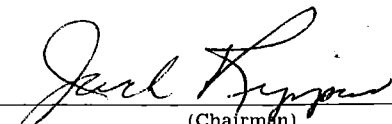
Submittal:

2 copies if no amdts.

4 copies if amdts.

5 copies if to be printed engrossed.

(1973)


(Chairman)

Senator Jack Ripper, Chairman

Sen. Thomas Hartung
will lead floor discussion.

REPRINT

House Bill 2157

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST, MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS, WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request of the Attorney General)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revised

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney's fees to successful applicants.

Requires meetings of public boards, bureaus, commissions, committees and subcommittees to be open to public unless such meetings relate to labor negotiations, individual personnel matters or preliminary negotiations on matters of trade or commerce where public body is in competition with public body in other state or nation. Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1 A BILL FOR AN ACT

2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, ~~341.290, 342.850, 432.115, 476.090, 483.610, 522.510, 522.520, 547.120,~~
5 561.265, 573.350, 576.024, 576.395, 577.826, 578.190 ~~and 579.185~~; repealing
6 ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120, 399.220, ~~432.120,~~
7 ~~432.130,~~ 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, ~~656.702,~~
8 696.580, 697.220, 697.725, ~~721.050 and 744.017~~; and declaring an emergency.

9 **Be It Enacted by the People of the State of Oregon:**

10 **SECTION 1.** Sections 2 to ~~12~~¹¹ of this Act are added to and made a part
11 of ORS chapter 192.

12 **SECTION 2.** As used in this 1973 Act:

13 (1) "Public body" includes every state officer, agency, department,
14 division, bureau, board and commission; every county and city governing
15 body, school district, special district, municipal corporation, and any board,
16 department, commission, council, or agency thereof; and any other public
17 agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

25 (5) "Writing" means handwriting, typewriting, printing, photostating,
26 photographing and every means of recording, including letters, words,
27 pictures, sounds, or symbols, or combination thereof, and all papers, maps,
28 magnetic or paper tapes, photographic films and prints, magnetic or punched
29 cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

33 **SECTION 4.** The custodian of any public records, unless otherwise
34 expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect ^{shall} is bound to give him, on demand, a certified copy of
9 it, if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy. ~~Computer data shall be provided~~
11 ~~in a form determined by the public body.~~

12 (2) The public body may establish fees reasonably calculated to re-
13 imburse it for its actual cost in making such records available.

14 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
15 denied the right to inspect or to receive a copy of any public record of a
16 state agency may petition the Attorney General to review the public record
17 to determine if it may be withheld from public inspection. The burden is
18 on the agency to sustain its action. The Attorney General shall issue his
19 order denying or granting the petition, or denying it in part and granting
20 it in part, within three business days from the day he receives the petition.

21 (2) If the Attorney General grants the petition and orders the state
22 agency to disclose the record, or if he grants the petition in part and
23 orders the state agency to disclose a portion of the record, the state agency
24 may institute proceedings for injunctive or declaratory relief in the Circuit
25 Court for Marion County. If the Attorney General denies the petition in
26 whole or in part, or if the state agency continues to withhold the record or
27 a part of it notwithstanding an order to disclose by the Attorney General,
28 the person seeking disclosure may institute such proceedings.

29 (3) The Attorney General shall serve as counsel for the state agency
30 in a suit filed under subsection (2) of this section if the suit arises out of
31 a determination by him that the public record should not be disclosed, or
32 that a part of the public record should not be disclosed if the state agency
33 has fully complied with his order requiring disclosure of another part or

1 parts of the public record, and in no other case. In any case in which the
2 Attorney General is prohibited from serving as counsel for the state agency,
3 the agency may retain special counsel.

4 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
5 case of a person denied the right to inspect or receive a copy of any public
6 record of a public body other than a state agency, except that in such case
7 the district attorney of the county in which the public body is located, or if
8 it is located in more than one county the district attorney of the county
9 in which the administrative offices of the public body are located, shall
10 carry out the functions of the Attorney General, and any suit filed shall be
11 filed in the circuit court for such county, and except that the district attor-
12 ney shall not serve as counsel for the public body, in the cases permitted
13 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
14 serves as counsel for it.

15 **SECTION 8.** In any case in which a person is denied the right to inspect
16 or to receive a copy of a public record in the custody of an elected official,
17 or in the custody of any other person but as to which an elected official
18 claims the ~~privilege of nondisclosure~~ ^{right to withhold disclosure}, no petition to require disclosure may
19 be filed with the Attorney General or district attorney, or if a petition is
20 filed it shall not be considered by the Attorney General or district attorney
21 after a claim of ~~privilege~~ ^{right to withhold disclosure} by an elected official. In such case a person
22 denied the right to inspect or to receive a copy of a public record may
23 institute proceedings for injunctive or declaratory relief in the appropriate
24 circuit court, as specified in section 6 or 7 of this 1973 Act, and the At-
25 torney General or district attorney may upon request serve or decline to
26 serve, in his discretion, as counsel in such suit for an elected official for
27 which he ordinarily serves as counsel. Nothing in this section shall pre-
28 clude an elected official from requesting advice from the Attorney General
29 or a district attorney as to whether a public record should be disclosed.

30 **SECTION 9.** (1) In any suit filed under ~~section~~ ^{section} 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

1 court, on its own motion, may view the documents in controversy in
 2 camera before reaching a decision. Any noncompliance with the order of
 3 the court may be punished as contempt of court.

4 (2) Except as to causes the court considers of greater importance, pro-
 5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
 6 docket over all other causes and shall be assigned for hearing and trial at
 7 the earliest practicable date and expedited in every way.

8 (3) If a person seeking the right to inspect or to receive a copy of a
 9 public record prevails in such suit, he shall be awarded his reasonable
 10 attorney fees. If such person prevails in part, the court may in its dis-
 11 cretion award him his reasonable attorney fees, or an appropriate portion
 12 thereof.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
 14 torney requesting him to order a public record to be made available for
 15 inspection or to be produced shall be in substantially the following form,
 16 or in a form containing the same information:

17 _____
 18 _____ (date)
 19 I (we), _____, the undersigned, request the
 20 _____ (name(s))
 21 Attorney General (or District Attorney of _____ County) to
 22 order _____ and its employees to (make
 23 _____ (name of governmental body)
 24 available for inspection) (produce a copy or copies of) the following records:

25 1. _____
 26 _____ (Name or description of record)

27 2. _____
 28 _____ (Name or description of record)

29 I (we) asked to inspect and/or copy these records on _____ (date)
 30 at _____ (address). The request was denied by the follow-
 31 ing person(s):

32 1. _____
 33 _____ (Name of public officer or employee; title or position, if known)

34 2. _____
 _____ (Name of public officer or employee; title or position, if known)

_____ (Signature(s))
 35 This form should be delivered or mailed to the Attorney General's office
 36 in Salem, or the district attorney's office in the county courthouse.

37 _____

*Printed
 Last name
 should be
 here*

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 ~~(a) Communications within a governmental body or between govern-~~
13 ~~mental bodies of an advisory nature to the extent that they cover other~~
14 ~~than purely factual materials and are preliminary to any final agency~~
15 ~~determination of policy or action. This exemption shall not apply unless~~
16 ~~the public body shows that in the particular instance the public interest~~
17 ~~in encouraging frank communication between officials and employees of~~
18 ~~governmental bodies clearly outweighs the public interest in disclosure;~~

19 ~~(a)~~
20 ~~(b) Records of a public body pertaining to litigation to which the public~~
21 ~~body is a party if the complaint has been filed, or if the complaint has not~~
22 ~~been filed, if the public body shows that such litigation is reasonably~~
23 ~~likely to occur. This exemption does not apply to litigation which has~~
24 ~~been concluded, and nothing in this paragraph shall limit any right or~~
25 ~~opportunity granted by discovery or deposition statutes to a party to~~
26 ~~litigation or potential litigation;~~

27 ~~(c) Information of a personal nature such as that kept in a personnel,~~
28 ~~medical or similar file, if the public disclosure thereof would constitute an~~
29 ~~unreasonable invasion of personal privacy;~~

30 ~~(d) Information submitted to a governmental body in confidence and~~
31 ~~not otherwise required by law to be submitted, unless the public interest~~
32 ~~in disclosure clearly outweighs the public and private interest in nondis-~~
33 ~~closure;~~

(d) "Trade secrets." "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate mine, except that the record

of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation. ^{by statute, to disclosure or discovery in criminal cases;}

^{test questions, scoring keys, and other examination data used to}
 13. administer a licensing examination examination

habilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

"(e) Records, reports and other information received or compiled by the Superintendent of Banking in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

"(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

"(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

- [7]
- 1 (b) Trade secrets. "Trade secrets," as used in this section, may include,
 - 2 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
 - 3 compound, procedure, production data, or compilation of information which
 - 4 is not patented, which is known only to certain individuals within a
 - 5 commercial concern who are using it to fabricate, produce, or compound an
 - 6 article of trade or a service or to locate mir, except that the record

7 commercial
of an arrest or the report of a crime shall not be confi-
dential unless and only so long as there is a clear need in
a particular case to delay disclosure in the course of an
investigation. statute, to disclosure or discovery in criminal cases;

8 test questions, scoring keys, and other examination data used to

- 13 administer a licensing examination, examination for employment, or aca-
- 14 demic examination;

- 15 (h) Information consisting of production records, sale or purchase
- 16 records or catch records, or similar business records of a private concern or
- 17 enterprise, required by law to be submitted to or inspected by a govern-
- 18 mental body to allow it to determine fees or assessments payable or to
- 19 establish production quotas, to the extent that such information is in a form
- 20 which would permit identification of the individual concern or enterprise.
- 21 Nothing in this paragraph shall limit the use which can be made of such
- 22 information for regulatory purposes or its admissibility in any enforcement
- 23 proceeding;

- 24 (i) Information relating to the appraisal of real estate prior to its

"(g) The names and signatures of employees who sign
authorization cards or petitions for the purpose of request-
ing representation or decertification elections."

"(2) The following public records are exempt from dis-
closure under this 1973 Act:

"(a) Communications within a public body or between
public bodies of an advisory nature to the extent that they
cover other than purely factual materials and are preliminary
to any final agency determination of policy or action. This
exemption shall not apply unless the public body shows that
in the particular instance the public interest in encouraging
frank communication between officials and employees of public
bodies clearly outweighs the public interest in disclosure;

"(b) Information of a personal nature such as that kept
in a personal, medical or similar file, if the public dis-
closure thereof would constitute an unreasonable invasion of
privacy, unless the public interest by clear and convincing
evidence requires disclosure in the particular instance. The
party seeking disclosure shall have the burden of showing
that public disclosure would not constitute an unreasonable
invasion of privacy;

"(c) Information submitted to a public body in confidence
and not otherwise required by law to be submitted, where such
information should reasonably be considered confidential,
the public body has obliged itself in good faith not to dis-
close the information, and when the public interest would
suffer by the disclosure;

"(d) Information or records of the Corrections Division,
including the State Board of Parole and Probation, to the
extent that disclosure thereof would interfere with the re-

in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

"(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

"(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

"(d) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

"(e) Records, reports and other information received or compiled by the Superintendent of ~~Banking~~ in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

"(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

"(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

"(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ~~ORS~~ ^{41.675} 1.440, 7.211, 7.215, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 474.160, 476.090, 483.610, ~~656.707~~ ^{656.195} 657.665, 706.720, 706.730, 715.040, 721.050, 731.264 or 744.017; and

"(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records

bodies clearly outweighs the public interest in disclosure;

"(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

"(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

"(d) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

"(e) Records, reports and other information received or compiled by the Superintendent of ~~Banking~~ in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

"(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

"(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

"(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ~~ORS~~ ^{41.675} 1.440, 7.211, 7.215, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 474.160, 476.090, 483.610, ~~656.707~~ ^{656.707}, 657.665, 706.720, 706.730, 715.040, 721.050, 731.264 or 744.017; and

"(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable."

(b)
(c) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate mines, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation.

test questions, scoring keys, and other examination data used to

administer a licensing examination, examination for employment, or academic examination;

(d) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, to the extent that such information is in a form which would permit identification of the individual concern or enterprise.

(e) Information relating to the appraisal of real estate prior to its acquisition; and

(f) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(g) Reports made to or filed with the court under ORS 137.075 or 137.530;

(h) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions

(i) Information relating to the appraisal of real estate prior to its acquisition; and

(j) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(k) Reports made to or filed with the court under ORS 137.075 or 137.530;

(l) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions

(m) Information relating to the appraisal of real estate prior to its acquisition; and

(n) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(o) Reports made to or filed with the court under ORS 137.075 or 137.530;

(p) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions

(q) Information relating to the appraisal of real estate prior to its acquisition; and

(r) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(s) Reports made to or filed with the court under ORS 137.075 or 137.530;

(t) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions

(u) Information relating to the appraisal of real estate prior to its acquisition; and

(v) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(w) Reports made to or filed with the court under ORS 137.075 or 137.530;

(x) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions

1 of the division, if the public interest in confidentiality of such information
2 or records clearly outweighs the public interest in disclosure;

3 (m) Public records or information the disclosure of which is prohibited
4 or restricted, or which is otherwise made confidential or privileged under
5 ORS 1.440, 7.211, 7.215, 44.040, 146.780, 173.230, 179.495, 181.540, 306.129,
6 314.835, 314.840, 336.195, 351.065, 411.320, 418.770, 419.567, 432.060, 432.425,
7 ~~432.430, 474.160 or 657.665.~~

8 (2) ⁽³⁾ If any public record contains material which is not exempt under
9 subsections, ⁽²⁾ (1), ⁽⁴⁾ or ⁽³⁾ (3), of this section, as well as material which is exempt
10 from disclosure, the public body shall separate the exempt and nonexempt
11 material and make the nonexempt material available for examination.

12 ⁽⁴⁾ (3) (a) Upon application of any public body prior to convening of the
13 1975 regular session of the Legislative Assembly, the Governor may exempt
14 any class of public records, in addition to the classes specified in subsection
15 (1) of this section, from disclosure under this 1973 Act unless the public
16 interest requires disclosure in the particular instance, if he finds that the
17 class of public records for which exemption is sought is such that unlimited
18 public access thereto would substantially prejudice or prevent the carrying
19 out of any public function or purpose, so that the public interest in confi-
20 dentiality of such records substantially outweighs the public interest in
21 disclosure. Such exemption from disclosure shall be limited or conditioned
22 to the extent the Governor finds appropriate.

23 (b) Prior to the granting of any exemption under this subsection the
24 Governor shall hold a public hearing after notice as provided by ORS
25 183.335, or he may designate the Attorney General to hold the required
26 hearing.

27 (c) ^{Am} An exemption granted under this subsection shall expire upon
28 adjournment of the 1975 regular session of the Legislative Assembly.

29 ~~SECTION 12.~~ (1) For purposes of this section, "governing body" means
30 any public board, bureau, commission, committee or subcommittee con-
31 sisting of two or more members, which has authority to make decisions or
32 recommendations on policy or administration for or to a public body.

33 (2) It is the policy of this state that every governing body having ad-

1 visory, legislative or rulemaking functions shall make decisions on the
2 basis of open discussions at public meetings.

3 (3) Except as specifically permitted by this section, no governing body
4 may exclude the public from any meeting at which it transacts or discusses
5 public business.

6 (4) Every public body shall give notice to the public, reasonably
7 designed to give actual notice to all interested persons, of the time and
8 place of meetings at which it will transact or discuss public business. In the
9 case of any emergency meeting or meeting held on necessarily short notice,
10 such notice shall be appropriate to the circumstances. No governing body or
11 quorum thereof shall meet privately for the purpose of conducting or dis-
12 cussing public business.

13 (5) When private communications among or staff communications with
14 the members of a governing body substantially form the basis for a decision,
15 the substance of such communications shall be disclosed at public meetings.

16 (6) A governing body may close that portion of a meeting or hearing
17 in which it is solely engaged in one or more of the following:

18 (a) Labor negotiations and matters related directly thereto;

19 (b) Deliberations on the appointment (other than to fill a vacancy
20 in elective office), employment or dismissal of a particular public officer
21 or employee, or hearings on complaints or charges brought against such
22 officer or employee unless the officer or employee requests a public hearing; or

23 (c) Preliminary negotiations involving matters of trade or commerce
24 in which the governmental body, or public body of which it is a part or to
25 which it reports, is in competition with public bodies of other states or
26 nations.

27 (7) Before holding a closed meeting or hearing under subsection (6)
28 of this section the governing body shall give notice thereof, which will be
29 deemed sufficient if stated in a previous meeting or hearing or a portion
30 of the same meeting or hearing which is open to the public, or if furnished
31 to one or more newspapers of general circulation in the community prior
32 to the day of the closed meeting, and if it specifies the paragraph or para-
33 graphs of subsection (6) of this section which authorizes closing the meet-
34 ing or hearing.

1 (8) A governing body may also:

2 (a) Exclude any witness who is not a party from a hearing during
3 examination of another witness in the matter being investigated; or

4 (b) Expel or exclude any person from a meeting or hearing when
5 necessary to preserve order.

6 (9) Nothing in this section shall be construed to affect the deliberations
7 of grand juries.

8 (10) Any person may commence a suit in the circuit court for the
9 county in which the governing body ordinarily meets, to enjoin violations
10 ~~or threatened violations of this section by a governing body.~~

11 Section 13. ORS 44.040 is amended to read:

12 44.040. (1) There are particular relations in which it is the policy of
13 the law to encourage confidence, and to preserve it inviolate; therefore a
14 person cannot be examined as a witness in the following cases:

15 (a) A husband shall not be examined for or against his wife without
16 her consent, or a wife for or against her husband without his consent; nor
17 can either, during the marriage or afterwards, be, without the consent of
18 the other, examined as to any communication made by one to the other dur-
19 ing the marriage. The exception does not apply to a civil action, suit or
20 proceeding, by one against the other, or to a criminal action or proceeding
21 for a crime committed by one against the other.

22 (b) An attorney shall not, without the consent of his client, be examined
23 as to any communication made by the client to him, or his advice given
24 thereon, in the course of professional employment.

25 (c) A priest or clergyman shall not, without the consent of the person
26 making the confession, be examined as to any confession made to him in
27 his professional character, in the course of discipline enjoined by the
28 church to which he belongs.

29 (d) A regular physician or surgeon shall not, without the consent of
30 his patient, be examined in a civil action, suit or proceeding, as to any
31 information acquired in attending the patient, which was necessary to
32 enable him to prescribe or act for the patient.

1 ~~[(e)]~~ (e) A public officer shall not be examined as to ~~communications made~~
2 to him in official confidence, when the public interest would suffer by the
3 disclosure.] *Receipts - 11/1/11*

4 ~~[(f)]~~ (e) A stenographer shall not, without the consent of his or her
5 employer, be examined as to any communication or dictation made by
6 the employer to him or her in the course of professional employment.

7 ~~[(g)]~~ (f) A licensed professional nurse shall not, without the consent
8 of a patient who was cared for by such nurse, be examined in a civil action,
9 suit or proceeding, as to any information acquired in caring for the patient,
10 which was necessary to enable the nurse to care for the patient.

11 ~~[(h)]~~ (g) A certified psychologist, as defined in ORS 675.010, shall
12 not, without the consent of his client, be examined as to any communication
13 made by the client to him, or his advice given thereon, in the course of his
14 professional employment.

15 ~~[(i)]~~ (h) A certificated staff member of an elementary or secondary
16 school shall not be examined in any civil action, suit or proceeding, as to
17 any conversation between the certificated staff member and a student
18 which relates to the personal affairs of the student or his family, and
19 which if disclosed would tend to damage or incriminate the student or
20 his family. Any violation of the privilege provided by this section may
21 result in the suspension of certification of the professional staff member
22 as provided in ORS 342.175 to 342.185.

23 (2) If a party to the action, suit or proceeding offers himself as a
24 witness, it is deemed a consent to the examination also of a wife, husband,
25 attorney, clergyman, physician or surgeon, stenographer, licensed profes-
26 sional nurse, certified psychologist or certificated staff member on the
27 same subject.

28 Section 14. ORS 59.680 is amended to read:

29 59.680. In addition to the filing of the bond required under ORS 59.670,
30 every such person shall file with the Corporation Commissioner, on or
31 before the 10th day of each month, a verified statement showing the
32 total amount of money received by him on account of the sale of outstand-
33 ing and unredeemed shares theretofore issued by him and which were in
34 force on the last day of the preceding month. This statement shall also set

1 forth the name and address of every person who during the preceding
2 month became a purchaser of any such share, together with the amount of
3 money collected thereon and paid or to be paid therefor. *[The statement*
4 *shall not be a public record, but shall be only for the information of the*
5 *Corporation Commissioner and shall not be divulged by him or by anyone*
6 *having access thereto except in court proceedings involving violation of*
7 *ORS 59.670 or 59.680.]* At the time of filing this sworn statement, such
8 person shall also deposit with the State Treasurer cash or securities speci-
9 fied as authorized investments for domestic insurance companies under the
10 insurance laws of this state, in a sum at least equal in value, when added
11 to the securities previously deposited by any such person with the State
12 Treasurer, to 50 percent of the total amount theretofore received by such
13 person on account of such shares. If at any time the securities so deposited
14 are in excess of 50 percent of the amount received in account of the then
15 outstanding and unredeemed shares such person may withdraw the excess,
16 and the State Treasurer is directed to return the excess to the person de-
17 positing it. The securities so deposited shall be for the protection of all
18 purchasers, or holders, of any such shares from the respective persons
19 making the deposit, but a deposit by any such person hereunder shall be
20 security only for the performance of his own contract as evidenced by
21 the share sold and disposed of by him. The cash or securities, together with
22 all accrued interest or dividends, shall be held and disposed of in the
23 manner provided by law in respect to cash or securities deposited with the
24 State Treasurer, and he shall be entitled to collect the fees authorized
25 pursuant to state law pertaining to and regulating title insurance.

26 Section 15. ORS 146.780 is amended to read:

27 146.780. (1) Every medical investigator who receives a report under
28 ORS 146.750 shall immediately report by telephone to the Chief Medical
29 Investigator and shall record the details of the report on a form provided
30 by the office of the Chief Medical Investigator and shall send a copy of
31 the completed form to the Chief Medical Investigator.

32 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
33 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-

1 lic inspection of public records [*and public documents*] , records and reports
2 compiled under the provisions of this section are confidential and are not
3 accessible for public inspection.

4 Section 16. ORS 181.540 is amended to read:

5 181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170]
6 **sections 2 to 11 of this 1973 Act** relating to confidentiality and accessibility
7 for public inspection of public records [*and public documents*] , finger-
8 prints, photographs, records and reports compiled under the provisions of
9 ORS 181.510 to 181.530 are confidential and are not accessible for public
10 inspection except as provided in subsection (2) of ORS 181.065, or as ordered
11 by a court.

12 Section 17. ORS 255.015 is amended to read:

13 255.015. [(1) *The provisions of ORS 192.005 to 192.170 notwithstanding,*
14 *voters' pamphlet material shall be available to the public as provided in*
15 *subsection (2) of this section.*]

16 [(2)] After the 65th day prior to the date of the primary or general
17 election the Secretary of State shall, upon request, make available **to any**
18 **person** voters' pamphlet material filed pursuant to the provisions contained
19 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

20 Section 18. ORS 274.745 is amended to read:

21 274.745. (1) Records of drilling conducted by a permittee under ORS
22 274.740 shall be filed by the permittee with the State Department of Geology
23 and Mineral Industries as prescribed by ORS 520.095. [*Such records shall be*
24 *treated as confidential for a period of five years from the date of filing*
25 *unless the permittee authorizes their earlier release.*]

26 (2) The division may require, as a condition to the issuance of any lease
27 under ORS 274.705 to 274.860, that the lessee make available to the division,
28 or the State Department of Geology and Mineral Industries, upon request,
29 all factual and physical exploration results, logs and records resulting from
30 the operations under the lease. [*Any such factual or physical exploration*
31 *results, logs or records which the lessee is required to make available to the*
32 *division and the department shall not be open to inspection by any other*
33 *person or agency without the written consent of the lessee.*]

1 [(3) No member of the Department of Geology and Mineral Industries,
2 officer or employe thereof, or any person performing any function or work
3 assigned to him by the department, shall disclose to any person who is not
4 a member, officer, employe of the department or to any person who is not
5 performing any function or work assigned to him by the department, any
6 information obtained from the inspection of such factual or physical explor-
7 ation results, logs or records, or use such information for purposes other
8 than the administration of the functions, responsibilities, and duties vested
9 in the department by law, except upon the written consent of the permittee
10 or lessee making such information available to the department.]

Amended by amendment 19
11 ~~Section 19. ORS 341.290 is amended to read:~~

12 341.290. The board of education of a community college district shall
13 be responsible for the general supervision and control of any and all com-
14 munity colleges operated by the district. Consistent with any applicable
15 rules and regulations of the State Board of Education, the board may:

16 (1) Subject to ORS chapter 237, employ administrative officers, pro-
17 fessional personnel and other employes, define their duties, terms and
18 conditions of employment and prescribe compensation therefor.

19 (2) Enact rules for the government of the community college, including
20 professional personnel and other employes thereof and students therein.

21 (3) Prescribe the educational program.

22 (4) Control use of and access to the grounds, buildings, books, equip-
23 ment and other property of the district.

24 (5) Acquire, receive, hold control, convey, sell, manage, operate, lease,
25 lease-purchase, lend, invest, improve and develop any and all property of
26 whatever nature given to or appropriated for the use, support or benefit
27 of any activity under the control of the board, according to the terms and
28 conditions of such gift or appropriation.

29 (6) Purchase real property upon a contractual basis when the period
30 of time allowed for payment under the contract does not exceed five years.

31 (7) Subject to ORS chapter 279, purchase relocatable classrooms and
32 other relocatable structures in instalment transactions in which deferred
33 instalments of the purchase price are payable over not more than 10 years

1 ~~from the date such property is delivered to the district for occupancy and~~
2 are secured by a security interest in such property. Such transactions
3 may take the form of, but are not limited to lease-purchase agreements.

4 (8) Establish, lease for not more than 10 years with or without an
5 option to purchase, operate, equip and maintain food service facilities,
6 bookstores and other revenue producing facilities connected with the oper-
7 ation of the community college.

8 (9) Fix standards of admission to the community college, prescribe and
9 collect tuition for admission to the community college, including fixing
10 different tuition rates for students who reside in the district, students who
11 do not reside in the district but are residents of the state and students who
12 do not reside in the state.

13 (10) Prescribe and collect fees and expend funds so raised for special
14 programs and services for the students and for programs for the cultural
15 and physical development of the students.

16 (11) Provide and disseminate to the public information relating to the
17 program, operation and finances of the community college.

18 (12) Establish or contract for advisory and consultant services.

19 (13) Take, hold and dispose of mortgages on real and personal property
20 acquired by way of gift or arising out of transactions entered into in ac-
21 cordance with the powers, duties and authority of the board and institute,
22 maintain and participate in suits and actions and other judicial proceedings
23 in the name of the district for the foreclosure of such mortgages.

24 (14) Maintain programs, services and facilities, and, in connection
25 therewith, cooperate and enter into agreements with any person or public
26 or private agency.

27 (15) Provide student services including health, guidance, counseling
28 and placement services, and contract therefor.

29 (16) Join appropriate associations and pay any required dues therefor
30 from resources of the district.

31 (17) Apply for federal funds and accept and enter into any contracts
32 or agreements for the receipt of such funds from the Federal Government
33 or its agencies for educational purposes.

1 (18) Exercise any other power, duty or responsibility necessary to
2 carry out the functions under this section or required by law.

3 (19) Prescribe rules for the use and access to public records of the
4 district that are consistent with [ORS 192.030] sections 2 to 11 of this 1973
5 Act. [However, the following records shall not be made available to public
6 inspection for any purpose except with the consent of the person who is
7 the subject of the record, student or faculty, or upon order of a court of
8 competent jurisdiction.]

9 [(a) Student records relating to matters such as grades, conduct, per-
10 sonal and academic evaluations, results of psychometric testing, disciplinary
11 actions, if any, and other personal matters.]

12 [(b) Faculty records relating to matters such as conduct, personal and
13 academic evaluations, disciplinary actions, if any, and other personal mat-
14 ters.]

15 Section 20. ORS 342.850 is amended to read:

16 342.850. (1) The district superintendent of every common and union
17 high school district having an average daily membership, as defined in
18 ORS 327.006, of more than 500 students in the district shall cause to have
19 made at least annually an evaluation of performance for each teacher em-
20 ployed by the district in order to allow the teacher and the district to
21 measure the teacher's development and growth in the teaching profession.
22 A form shall be prescribed by the State Board of Education and completed
23 pursuant to rules adopted by the district school board. The person or
24 persons making the evaluations must hold teaching certificates. The evalu-
25 ation shall be signed by the school official who supervises the teacher and
26 by the teacher. A copy of the evaluation shall be delivered to the teacher.

27 (2) The annual evaluation reports shall be maintained in the person-
28 nel files of the district.

29 (3) The annual evaluation report shall be placed in the teacher's per-
30 sonnel file only after reasonable notice to the teacher. Any explanation
31 relating to the evaluation which the teacher desires to make shall be
32 placed in the personnel file.

1 ~~[(4) The personnel file shall be open for inspection by such teacher~~
2 ~~but shall be open only to such other persons as are officially designated by~~
3 ~~the board or by the teacher, in accordance with such rules and regula-~~
4 ~~tions as the board shall adopt.]~~

5 Section 21. ORS 432.115 is amended to read:

6 432.115. The State Registrar and county registrars shall, upon request,
7 [subject to ORS 432.120,] furnish to any applicant a certified copy of the
8 original certificates, or any parts thereof, filed in his office, or permit their
9 inspection. However, a certified copy of a copy of a certificate may not be
10 issued, except that the county registrar shall certify or permit the inspec-
11 tion of any abstract of death certificate on file in his office.

12 Section 22. ORS 476.090 is amended to read:

13 476.090. (1) The State Fire Marshal shall keep in his office a record
14 of all fires occurring in this state and of all facts concerning the same,
15 including statistics as to the extent of such fires and the damage caused,
16 whether such losses were covered by insurance, and if so, in what amount.
17 The record shall be made daily from the reports made to him by his assist-
18 ants. [All such records shall be public, except any testimony taken in an
19 investigation under the provisions of ORS 476.010 to 476.100, 476.210 to
20 476.270 and 479.180, which the State Fire Marshal, in his discretion, may
21 withhold from the public.]

22 (2) This section shall not apply to forest lands under the jurisdiction
23 of the State Forester.

24 Section 23. ORS 483.610 is amended to read:

25 483.610. [(1) All accident reports made to the Motor Vehicles Division
26 or to any sheriff, chief of police or other authorized agent shall be without
27 prejudice to the individual so reporting and shall be for the confidential
28 use of state administrative and enforcement agencies.]

29 [(2) The Motor Vehicles Division, upon written request, shall, if avail-
30 able, disclose the following information to any party involved in the acci-
31 dent, or, in the event of his death, to any member of his family, or his
32 personal representatives:]

33 [(a) The identity of the owner, driver, occupants and the license num-
34 ber of a motor vehicle involved in an accident;]

~~1 [(b) The names of any companies insuring said owner or driver; and]~~

~~2 [(c) The identity of any witnesses to said accident.]~~

~~3 [(3) No such report shall be used as evidence in any trial, civil or
4 criminal, arising out of an accident. The Motor Vehicles Division shall
5 furnish upon demand of any person who has, or claims to have, made such
6 a report or, upon demand of any court, a certificate showing that a specified
7 accident report has or has not been made to the Motor Vehicles Division,
8 solely to prove a compliance or a failure to comply with the requirement
9 that such a report be made to the division.]~~

~~10 [(4)] (1) The Motor Vehicles Division shall tabulate and may ana-
11 lyze all accident reports and shall publish annually, or at more frequent
12 intervals, statistical information based thereon as to the number and cir-
13 cumstances of traffic accidents.~~

~~14 [(5)] (2) Any incorporated city may by ordinance require that the
15 driver of a vehicle involved in an accident file with a designated city
16 department a report of such accident or a copy of any report required to
17 be filed under ORS 483.606. [All such reports shall be for the confidential
18 use of the city department but subject to the provisions of subsections (1)
19 and (2) of this section.]~~

20 Section 24. ORS 522.510 is amended to read:

21 522.510. (1) The owner or operator of any well shall keep, or cause
22 to be kept, a careful and accurate log, core record and history of the drill-
23 ing of the well.

24 (2) The log referred to in subsection (1) of this section shall show the
25 character and depth of each formation encountered in the drilling of the
26 well; the amount, size and weight of casing used; and the location, depth
27 and temperature of water-bearing strata, including the temperature, chemi-
28 cal composition and other chemical and physical characteristics of fluid
29 encountered from time to time.

30 (3) The core record referred to in subsection (1) of this section shall
31 show the depth, character and fluid content of cores obtained, so far as
32 determined from the study and analysis thereof.

33 (4) The history referred to in subsection (1) of this section shall show
34 the location and amount of sidetracked casings, tools or other material;

1 the depth and quantity of cement in cement plugs; the shots of dynamite
2 or other explosives used; the results of production and other tests during
3 drilling operations and completion data.

4 (5) The log referred to in subsections (1) and (2) of this section shall
5 be kept in the local office of the owner or operator and, together with the
6 tour reports of the owner or operator, shall be subject, during business
7 hours, to inspection by the board, the supervisor or his authorized deputy [;
8 *except, any log kept with respect to a prospect well*].

9 Section 25. ORS 522.520 is amended to read:

10 522.520. Each owner or operator of any well **or prospect well** or his
11 designated agent shall file with the supervisor a copy of the log, history
12 and core record, or any portion thereof, **promptly upon completion, or**
13 **upon the written request of the supervisor or his authorized deputy** at any
14 time after the commencement, of the work of drilling any well [*other*
15 *than a*] **or prospect well** [*upon the written request of the supervisor or*
16 *his authorized deputy*] **and upon the abandonment or upon suspension of**
17 **operations conducted with respect to any well for a period of at least six**
18 **months**. The request shall be signed by the supervisor or the deputy and
19 served **upon** such owner, operator or agent either personally or by mail-
20 ing a copy of the request by [*registered*] **certified** mail to the last-known
21 post-office address of such owner, operator or agent.

22 Section 26. ORS 561.265 is amended to read:

23 561.265. (1) The department upon not less than three days notice in
24 writing is authorized to inspect and audit, during regular business hours,
25 necessary and applicable books and records of any person required by law
26 to report or pay fees or moneys to the department. Such inspection is for
27 the purpose of determining whether proper fees have been paid.

28 (2) "Fees" as used in this section includes fees due the department
29 by a person, each month, year, or other fixed time or period, the amount
30 of which is based upon the quantity, volume, weight or other measurement
31 of some article, product or commodity and such fees to be used by the
32 department in carrying out or enforcing a law under its jurisdiction. "Fees"
33 does not include a license fee, the exact amount of which is fixed by law.

1 *[(3) Information obtained by the department under the provisions of*
2 *this section shall not be a public record.]*

3 Section 27. ORS 573.350 is amended to read:

4 573.350. (1) Each person responsible for the payment of the fees
5 required by ORS 573.340 shall file a report with the department on October
6 1, January 1, April 1 and July 1 of each year in which payment of the
7 fees is required of the number of pounds of such herbicides sold, used or
8 consumed during the three calendar months immediately preceding the
9 date the report is due. The proper poundage fee shall be remitted with the
10 report. The person required to file the report and pay the fee shall have
11 a 15-day period of grace, immediately following the day the report and
12 payment are due, to file the report and pay the fee.

13 (2) No user or consumer of such herbicides is required to file a report
14 if the herbicides have been purchased from a manufacturer, jobber, broker
15 or wholesaler who is responsible for the payment of the fee on poundage
16 sold or from a retailer doing business in this state.

17 *[(3) The report required by this section shall not be a public record;*
18 *however, the board or the department may prepare and publish from its*
19 *records such statistics and information as it deems advisable and which*
20 *will not reveal any confidential information.]*

21 Section 28. ORS 547.120 is amended to read:

22 547.120. The board of supervisors immediately after its election shall
23 choose one of its number president of the board, and elect some suitable
24 person secretary, who may or may not be a member of the board. The
25 board shall adopt a seal with a suitable design, and shall keep a record of all
26 its proceedings [, *which shall be open to the inspection of all owners of*
27 *real estate of the district, as well as to all other interested persons*]. The
28 board shall report to the landowners at the annual meeting held under
29 the provision of ORS 547.110 what work has been done, either by the
30 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
31 if the secretary is a member of the board he shall be entitled to compen-
32 sation as provided for in ORS 547.125.

1 Section 29. ORS 576.024 is amended to read:

2 576.024. (1) It is necessary for the economy of this state, the livestock
3 industry and the welfare of the consuming public that the department ob-
4 tain statistical information for economic studies of the livestock industry
5 including the volume of production of livestock in this state; the chan-
6 nels into which such livestock is marketed; the total consumption of meat
7 in this state; the types and quantities consumed and the sources thereof;
8 and such other information as is pertinent to reveal additional potential
9 markets for livestock produced in this state.

10 (2) In order to carry out and maintain this continuing study, the de-
11 partment is authorized during business hours to inspect the records of
12 places or businesses which handle, store or sell meat animals, or meat as
13 defined in ORS 619.610. *[Such data and information shall not be a public*
14 *record. The department however may release or use such data or informa-*
15 *tion:]*

16 *[(a) When necessary in preparation or publishing statistics as are*
17 *necessary to carry out the purpose and intent of this section but which*
18 *shall not reveal any confidential data or information of the identity of*
19 *specific or particular places of business or establishments.]*

20 *[(b) When necessary in carrying out the responsibilities of the de-*
21 *partment under laws under its supervision and jurisdiction.]*

22 (3) The department, after public hearing under ORS chapter 183, may
23 require periodic reporting from the places or businesses described in this
24 section and require the furnishing to the department of the data or infor-
25 mation which may be needed in continuing the comprehensive study as
26 authorized in this section.

27 Section 30. ORS 576.395 is amended to read:

28 576.395. *[(1)]* The commission shall keep accurate books, records and
29 accounts of all its dealings which shall be open to inspection and audit by
30 the Secretary of State.

31 *[(2) The amount of assessment moneys paid to the commission and*
32 *reports or information filed with the commission by a first purchaser or*
33 *producer under ORS 576.051 to 576.584 are not a public record.]*

34 Section 31. ORS 577.826 is amended to read:

1 577.826. (1) After a petition is received or a written request is re-
2 ceived from the council as authorized by ORS 577.810, all persons eligible to
3 vote may vote in the referendum provided they register with the depart-
4 ment their names and such other pertinent information as is required.
5 The department shall provide a period of not less than 20 days during
6 which such persons may register. [*Only the names and addresses of the*
7 *persons who register are public record.*] The department thereafter shall
8 compile and file the list of persons eligible to vote, in the Salem office of
9 the department and may publish such list as it deems necessary for the
10 benefit of producers.

11 (2) Within 60 days after the list is filed, the department shall conduct
12 the referendum.

13 Section 32. ORS 578.190 is amended to read:

14 578.190. [(1)] The commission shall keep accurate books, records and
15 accounts of all its dealings which shall be open to inspection and audit by
16 the Secretary of State.

17 [(2) The amount of assessment moneys paid to the commission and
18 reports or information filed with the commission by a first purchaser or
19 grower under this chapter are not a public record.]

20 **Section 33. ORS 579.185 is amended to read:**

21 579.185. [(1)] The commission shall keep accurate books, records and
22 accounts of all its dealings which shall be open to inspection and audit
23 by the Secretary of State.

24 [(2) The amount of assessment moneys paid to the commission and
25 reports or information filed with the commission by a first purchaser or
26 grower under this chapter are not a public record.]

27 ⁽³⁾ ~~SECTION 34. ORS 128.700, 102.010, 102.020, 102.030, 210.110, 210.120,~~
"Section 33a. ORS 656.702 is amended to read:

"Section 33a. ORS 656.702 is amended to read:

1 577.826. (1) After a petition is received or a written request is re-
2 ceived from the council as authorized by ORS 577.810, all persons eligible to
3 vote may vote in the referendum provided they register with the depart-
4 ment their names and such other pertinent information as is required.
5 The department shall provide a period of not less than 20 days during
6 which such persons may register. [*Only the names and addresses of the*
7 *persons who register are public record.*] The department thereafter shall
8 compile and file the list of persons eligible to vote, in the Salem office of
9 the department and may publish such list as it deems necessary for the
10 benefit of producers.

11 (2) Within 60 days after the list is filed, the department shall conduct
12 the referendum.

13 Section 32. ORS 578.190 is amended to read:

14 578.190. [(1)] The commission shall keep accurate books, records and
15 accounts of all its dealings which shall be open to inspection and audit by
16 the Secretary of State.

17 [(2) *The amount of assessment moneys paid to the commission and*
18 *reports or information filed with the commission by a first purchaser or*
19 *grower under this chapter are not a public record.*]

20 Section 33. ORS 579.185 is amended to read:

21 579.185. [(1)] The commission shall keep accurate books, records and
22 accounts of all its dealings which shall be open to inspection and audit
23 by the Secretary of State.

24 [(2) *The amount of assessment moneys paid to the commission and*
25 *reports or information filed with the commission by a first purchaser or*
26 *grower under this chapter are not a public record.*]

27 (3) **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
28 399.220, 432.120, ~~432.130~~, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464,
29 619.825, 656.702, 696.580, 697.220, 697.725, 721.050 and ~~744.017~~ are repealed.

30 **SECTION 35.** This Act being necessary for the immediate preservation
31 of the public peace, health and safety, an emergency is declared to exist,
32 and this Act takes effect July 1, 1973.

6 which such persons may register. *[Only the names and*
7 *persons who register are public record.]* The department *shall*
8 compile and file the list of persons eligible to vote, in the *Salmon*
9 the department and may publish such list as it deems necessary *in*
10 benefit of producers.

11 (2) Within 60 days after the list is filed, the department shall *conduct*
12 the referendum.

13 Section 32. ORS 578.190 is amended to read:

14 578.190. [(1)] The commission shall keep accurate books, records and
15 accounts of all its dealings which shall be open to inspection and audit by
16 the Secretary of State.

17 [(2) *The amount of assessment moneys paid to the commission and*
18 *reports or information filed with the commission by a first purchaser or*
19 *grower under this chapter are not a public record.]*

20 Section 33. ORS 579.185 is amended to read:

21 579.185. [(1)] The commission shall keep accurate books, records and
22 accounts of all its dealings which shall be open to inspection and audit
23 by the Secretary of State.

24 [(2) *The amount of assessment moneys paid to the commission and*
25 *reports or information filed with the commission by a first purchaser or*
26 *grower under this chapter are not a public record.]*

27 ³SECTION 34. ORS 128.700, 192.010, 192.020, 192.020, 192.020, 192.020, 192.020

*Section 33a. ORS 656.702 is amended to read:

*656.702. The records of the [board and the] State
Accident Insurance Fund, excepting [payrolls and confidential
reports] employer account records and dividend schedules and
formulas shall be open to public inspection. The accident
experience records of the fund [for periods prior and sub-
sequent to January 1, 1966,] shall be available to a bona
fide rating organization to assist in making workmen's com-
pensation rates providing any costs involved in making the
records available shall be borne by the rating organization.
Accident experience records of direct responsibility employers
insuring with insurers issuing guaranty contracts under sub-
section (1) of ORS 656.405 shall also be available on the
same terms to assist in making such rates. 4

Phone: 378-8148

OFFICE OF THE LEGISLATIVE COUNSEL
109 State Capitol
Salem, Oregon 97310

To: Cecil Edwards
Secretary of the Senate

Date: 6/25/73

From: Kathleen Beaufait

KB

Attached are amendments to cure the conflict between
Engrossed Senate Bill 476, Engrossed Re-engrossed House
Bill 2279 and Re-Engrossed House Bill 2157. House Bill 2157
is coming up for third reading June 26, 1973.

Prepared by
Legislative Counsel's Office
June 25, 1973

PROPOSED AMENDMENTS TO RE-ENGROSSED HOUSE BILL 2157

On page 12 of the printed ^{corrected} re-engrossed bill, after line 17, insert:

"Section 15a. If House Bill 2279 (1973 regular session) becomes law, on the effective date of chapter ___, Oregon Laws 1973 (Enrolled House Bill 2279), section 15 of this Act is repealed and ORS 146.780 is amended to read:

"146.780. Notwithstanding the provisions of [ORS 192.005 to 192.170] sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility for public inspection of public records [and public documents], records and reports made under ^{the} provisions of ORS 146.750 are confidential and are not accessible for public inspection.".

On page 16, line 8, after "576.024" insert ", as amended by section 19, chapter ___, Oregon Laws 1973 (Enrolled Senate Bill 476),".

In line 20, delete "ORS 619.610" and insert "the applicable provisions of [this 1973 Act] chapter, Oregon Laws 1973 (Enrolled Senate Bill 476)".

SENATE COMMITTEE REPORT

Salem, Oregon _____

Mr. President:

Joint Special
Your Committee on Professional Responsibility to whom was referred

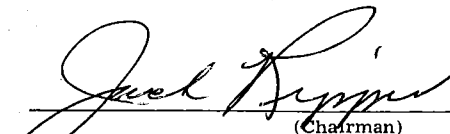
House Bill 2157, having had the same under consideration,

respectfully report it back with the recommendation that it:

- _____ Do pass: _____ ~~XX~~ Do pass with amendments:
_____ Be adopted: _____ Be adopted with amendments:
_____ Do pass with amendments to the printed engrossed bill.
_____ (Referred to Committee on Ways and Means by prior reference)
_____ (Other—specify)

The amendments made to the printed engrossed bill
are attached.

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.


(Chairman)

Sen. Jack Ripper
Sen. Thomas Hartung
will lead floor discussion.

AMENDMENTS TO HB 2157

On page 7 of the printed engrossed bill, after line 17, insert:

"(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060."

On page 9, line 21, after "44.040" insert ", as amended by section 6, chapter _____, Oregon Laws 1973 (Enrolled House Bill 2101)".

On page 10, line 5, after "(d)" insert "Subject to the provisions of sections 1 ^{to} through 5 of chapter _____, Oregon Laws 1973 (Enrolled House Bill 2101)".

*On page 10 of the printed engrossed bill delete "and".
In line 17 delete "and" and insert "and".*

On page 15 of the printed engrossed bill, after line 18, insert:

"Section 27a. If Senate Bill 106 (1973 regular session) becomes law, on the effective date of chapter _____, Oregon Laws 1973 (Enrolled Senate Bill 106), section 27 of this Act is repealed."

SENATE COMMITTEE REPORT

Salem, Oregon June 22, 1973

Mr. President:

JOINT SPECIAL
Your Committee on PROFESSIONAL RESPONSIBILITY to whom was referred

Engrossed House Bill 2157, having had the same under consideration,
respectfully report it back with the recommendation that it:

- _____ Do pass: _____ **XXX** Do pass with amendments:
_____ Be adopted: _____ Be adopted with amendments:
_____ Do pass with amendments to the printed engrossed bill.
_____ (Referred to Committee on Ways and Means by prior reference)
_____ (Other—specify)

**AMENDMENTS TO CURE THE CONFLICT WITH ENGROSSED RE-ENGROSSED
SENATE BILL 106.**

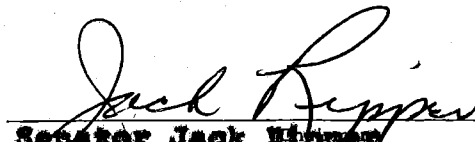
AMENDMENTS TO ENGROSSED HOUSE BILL 2157.

On page 13 of the printed engrossed bill, after line
18, insert:

"Section 27a. If Senate Bill 106 (1973 regular session)
becomes law, on the effective date of chapter _____, Oregon
Laws 1973 (Enrolled Senate Bill 106), section 27 of this Act
is repealed."

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

(1973)


Senator Jack Ripper
Senator Thomas Hartung
Sen. _____
will lead floor discussion.

House Bill 2157

Sponsored by Representatives MARTIN, L. JOHNSON, LINDQUIST, MACPHERSON, MARKHAM, MORRIS, RAGSDALE, R. STULTS, WHITEHEAD, Senators ATIYEH, CARSON, ROBERTS (at the request of the Attorney General)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises law relating to public disclosure by public bodies of public records. Requires public bodies in this state to make public records available to any person, subject to rules which public bodies may adopt to prevent interference with public duties, unless specifically excepted. Provides for exemption of specified public records from disclosure requirement. Authorizes public bodies to establish fees to reimburse actual cost of making public records available.

Authorizes person claiming wrongful withholding of public records to apply, to Attorney General in case of state agency or district attorney in case of any other public body, for an order requiring disclosure. Authorizes person claiming wrongful withholding of public records by elected official to institute proceedings for injunctive or declaratory relief in circuit court. Provides that aggrieved applicants or public bodies may obtain court review with early hearing on issue of whether public records should be disclosed. Requires award of attorney's fees to successful applicants.

Requires meetings of public boards, bureaus, commissions, committees and subcommittees to be open to public unless such meetings relate to labor negotiations, individual personnel matters or preliminary negotiations on matters of trade or commerce where public body is in competition with public body in other state or nation. Modifies or repeals certain provisions relating to public records and their disclosure.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1
2 Relating to public disclosure by public bodies of public matters; creating
3 new provisions; amending ORS 44.040, 59.680, 146.780, 181.540, 255.015,
4 274.745, 341.290, 342.850, 432.115, 476.090, 483.610, 522.510, 522.520, 547.120,
5 561.265, 573.350, 576.024, 576.395, 577.826, 578.190 and 579.185; repealing
6 ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120, 399.220, 432.120,
7 432.130, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 656.702,
8 696.580, 697.220, 697.725, 721.050 and 744.017; and declaring an emergency.

9 **Be It Enacted by the People of the State of Oregon:**

10 **SECTION 1.** Sections 2 to 12 of this Act are added to and made a part
11 of ORS chapter 192.

12 **SECTION 2.** As used in this 1973 Act:

13 (1) "Public body" includes every state officer, agency, department,
14 division, bureau, board and commission; every county and city governing
15 body, school district, special district, municipal corporation, and any board,
16 department, commission, council, or agency thereof; and any other public
17 agency of this state.

18 (2) "State agency" includes every state officer, agency, department,
19 division, bureau, board and commission.

20 (3) "Person" includes any natural person, corporation, partnership, firm
21 or association.

22 (4) "Public record" includes any writing containing information relating
23 to the conduct of the public's business, prepared, owned, used or retained
24 by a public body regardless of physical form or characteristics.

25 (5) "Writing" means handwriting, typewriting, printing, photostating,
26 photographing and every means of recording, including letters, words,
27 pictures, sounds, or symbols, or combination thereof, and all papers, maps,
28 magnetic or paper tapes, photographic films and prints, magnetic or punched
29 cards, discs, drums, or other documents.

30 **SECTION 3.** Every person has a right to inspect any public record
31 of a public body in this state, except as otherwise expressly provided by
32 section 11 of this 1973 Act.

33 **SECTION 4.** The custodian of any public records, unless otherwise
34 expressly provided by statute, shall furnish proper and reasonable oppor-

1 tunities for inspection and examination of the records in his office and
2 reasonable facilities for making memoranda or abstracts therefrom, during
3 the usual business hours, to all persons having occasion to make examina-
4 tion of them. The custodian of the records may make reasonable rules and
5 regulations necessary for the protection of the records and to prevent
6 interference with the regular discharge of his duties.

7 **SECTION 5.** (1) The custodian of any public record which a person
8 has a right to inspect is bound to give him, on demand, a certified copy of
9 it, if the record is of a nature permitting such copying, or shall furnish
10 reasonable opportunity to inspect or copy. Computer data shall be provided
11 in a form determined by the public body.

12 (2) The public body may establish fees reasonably calculated to re-
13 imburse it for its actual cost in making such records available.

14 **SECTION 6.** (1) Subject to section 8 of this 1973 Act, any person
15 denied the right to inspect or to receive a copy of any public record of a
16 state agency may petition the Attorney General to review the public record
17 to determine if it may be withheld from public inspection. The burden is
18 on the agency to sustain its action. The Attorney General shall issue his
19 order denying or granting the petition, or denying it in part and granting
20 it in part, within three business days from the day he receives the petition.

21 (2) If the Attorney General grants the petition and orders the state
22 agency to disclose the record, or if he grants the petition in part and
23 orders the state agency to disclose a portion of the record, the state agency
24 may institute proceedings for injunctive or declaratory relief in the Circuit
25 Court for Marion County. If the Attorney General denies the petition in
26 whole or in part, or if the state agency continues to withhold the record or
27 a part of it notwithstanding an order to disclose by the Attorney General,
28 the person seeking disclosure may institute such proceedings.

29 (3) The Attorney General shall serve as counsel for the state agency
30 in a suit filed under subsection (2) of this section if the suit arises out of
31 a determination by him that the public record should not be disclosed, or
32 that a part of the public record should not be disclosed if the state agency
33 has fully complied with his order requiring disclosure of another part or

1 parts of the public record, and in no other case. In any case in which the
2 Attorney General is prohibited from serving as counsel for the state agency,
3 the agency may retain special counsel.

4 **SECTION 7.** Section 6 of this 1973 Act is equally applicable to the
5 case of a person denied the right to inspect or receive a copy of any public
6 record of a public body other than a state agency, except that in such case
7 the district attorney of the county in which the public body is located, or if
8 it is located in more than one county the district attorney of the county
9 in which the administrative offices of the public body are located, shall
10 carry out the functions of the Attorney General, and any suit filed shall be
11 filed in the circuit court for such county, and except that the district attor-
12 ney shall not serve as counsel for the public body, in the cases permitted
13 under subsection (3) of section 6 of this 1973 Act, unless he ordinarily
14 serves as counsel for it.

15 **SECTION 8.** In any case in which a person is denied the right to inspect
16 or to receive a copy of a public record in the custody of an elected official,
17 or in the custody of any other person but as to which an elected official
18 claims the privilege of nondisclosure, no petition to require disclosure may
19 be filed with the Attorney General or district attorney, or if a petition is
20 filed it shall not be considered by the Attorney General or district attorney
21 after a claim of privilege by an elected official. In such case a person
22 denied the right to inspect or to receive a copy of a public record may
23 institute proceedings for injunctive or declaratory relief in the appropriate
24 circuit court, as specified in section 6 or 7 of this 1973 Act, and the At-
25 torney General or district attorney may upon request serve or decline to
26 serve, in his discretion, as counsel in such suit for an elected official for
27 which he ordinarily serves as counsel. Nothing in this section shall pre-
28 clude an elected official from requesting advice from the Attorney General
29 or a district attorney as to whether a public record should be disclosed.

30 **SECTION 9.** (1) In any suit filed under section 6 to 8 of this 1973
31 Act, the court has jurisdiction to enjoin the public body from withholding
32 records and to order the production of any records improperly withheld
33 from the person seeking disclosure. The court shall determine the matter
34 de novo and the burden is on the public body to sustain its action. The

1 court, on its own motion, may view the documents in controversy in
 2 camera before reaching a decision. Any noncompliance with the order of
 3 the court may be punished as contempt of court.

4 (2) Except as to causes the court considers of greater importance, pro-
 5 ceedings arising under sections 6 to 8 of this 1973 Act take precedence on the
 6 docket over all other causes and shall be assigned for hearing and trial at
 7 the earliest practicable date and expedited in every way.

8 (3) If a person seeking the right to inspect or to receive a copy of a
 9 public record prevails in such suit, he shall be awarded his reasonable
 10 attorney fees. If such person prevails in part, the court may in its dis-
 11 cretion award him his reasonable attorney fees, or an appropriate portion
 12 thereof.

13 **SECTION 10.** (1) A petition to the Attorney General or district at-
 14 torney requesting him to order a public record to be made available for
 15 inspection or to be produced shall be in substantially the following form,
 16 or in a form containing the same information:

17 _____
 18 _____ (date)
 19 I (we), _____, the undersigned, request the
 20 _____ (name(s))
 21 Attorney General (or District Attorney of _____ County) to
 22 order _____ and its employees to (make
 23 _____ (name of governmental body)
 24 available for inspection) (produce a copy or copies of) the following records:

25 1. _____
 26 _____ (Name or description of record)

27 2. _____
 28 _____ (Name or description of record)

29 I (we) asked to inspect and/or copy these records on _____
 30 _____ (date)
 31 at _____ The request was denied by the follow-
 32 _____ (address)
 33 ing person(s):

34 1. _____
 _____ (Name of public officer or employee; title or position, if known)

2. _____
 _____ (Name of public officer or employee; title or position, if known)

 _____ (Signature(s))

32 This form should be delivered or mailed to the Attorney General's office
 33 in Salem, or the district attorney's office in the county courthouse.

34 _____

1 (2) Promptly upon receipt of such a petition, the Attorney General
2 or district attorney shall notify the public body involved. The public
3 body shall thereupon transmit the public record disclosure of which is
4 sought, or a copy, to the Attorney General, together with a statement of its
5 reasons for believing that the public record should not be disclosed. In an
6 appropriate case, with the consent of the Attorney General, the public
7 body may instead disclose the nature or substance of the public record
8 to the Attorney General.

9 **SECTION 11.** (1) The following public records are exempt from dis-
10 closure under this 1973 Act unless the public interest requires disclosure
11 in the particular instance:

12 (a) Communications within a governmental body or between govern-
13 mental bodies of an advisory nature to the extent that they cover other
14 than purely factual materials and are preliminary to any final agency
15 determination of policy or action. This exemption shall not apply unless
16 the public body shows that in the particular instance the public interest
17 in encouraging frank communication between officials and employees of
18 governmental bodies clearly outweighs the public interest in disclosure;

19 (b) Records of a public body pertaining to litigation to which the public
20 body is a party if the complaint has been filed, or if the complaint has not
21 been filed, if the public body shows that such litigation is reasonably
22 likely to occur. This exemption does not apply to litigation which has
23 been concluded, and nothing in this paragraph shall limit any right or
24 opportunity granted by discovery or deposition statutes to a party to
25 litigation or potential litigation;

26 (c) Information of a personal nature such as that kept in a personnel,
27 medical or similar file, if the public disclosure thereof would constitute an
28 unreasonable invasion of personal privacy;

29 (d) Information submitted to a governmental body in confidence and
30 not otherwise required by law to be submitted, unless the public interest
31 in disclosure clearly outweighs the public and private interest in nondis-
32 closure;

1 (e) Trade secrets. "Trade secrets," as used in this section, may include,
2 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
3 compound, procedure, production data, or compilation of information which
4 is not patented, which is known only to certain individuals within a
5 commercial concern who are using it to fabricate, produce, or compound an
6 article of trade or a service or to locate minerals or other substances, having
7 commercial value, and which gives its user an opportunity to obtain a
8 business advantage over competitors who do not know or use it;

9 (f) Investigatory information compiled for criminal law purposes. Noth-
10 ing in this paragraph shall limit any right constitutionally guaranteed, or
11 granted by statute, to disclosure or discovery in criminal cases;

12 (g) Test questions, scoring keys, and other examination data used to
13 administer a licensing examination, examination for employment, or aca-
14 demic examination;

15 (h) Information consisting of production records, sale or purchase
16 records or catch records, or similar business records of a private concern or
17 enterprise, required by law to be submitted to or inspected by a govern-
18 mental body to allow it to determine fees or assessments payable or to
19 establish production quotas, to the extent that such information is in a form
20 which would permit identification of the individual concern or enterprise.
21 Nothing in this paragraph shall limit the use which can be made of such
22 information for regulatory purposes or its admissibility in any enforcement
23 proceeding;

24 (i) Information relating to the appraisal of real estate prior to its
25 acquisition;

26 (j) Any public records or information the disclosure of which is pro-
27 hibited by federal law or regulations;

28 (k) Reports made to or filed with the court under ORS 137.075 or
29 137.530;

30 (L) Information or records of the Corrections Division, including the
31 State Board of Parole and Probation, to the extent that disclosure thereof
32 would interfere with the rehabilitation of a person in custody of the divi-
33 sion or substantially prejudice or prevent the carrying out of the functions

1 of the division, if the public interest in confidentiality of such information
2 or records clearly outweighs the public interest in disclosure;

3 (m) Public records or information the disclosure of which is prohibited
4 or restricted, or which is otherwise made confidential or privileged under
5 ORS 1.440, 7.211, 7.215, 44.040, 146.780, 173.230, 179.495, 181.540, 306.129,
6 314.835, 314.840, 336.195, 351.065, 411.320, 418.770, 419.567, 432.060, 432.425,
7 432.430, 474.160 or 657.665.

8 (2) If any public record contains material which is not exempt under
9 subsections (1) or (3) of this section, as well as material which is exempt
10 from disclosure, the public body shall separate the exempt and nonexempt
11 material and make the nonexempt material available for examination.

12 (3) (a) Upon application of any public body prior to convening of the
13 1975 regular session of the Legislative Assembly, the Governor may exempt
14 any class of public records, in addition to the classes specified in subsection
15 (1) of this section, from disclosure under this 1973 Act unless the public
16 interest requires disclosure in the particular instance, if he finds that the
17 class of public records for which exemption is sought is such that unlimited
18 public access thereto would substantially prejudice or prevent the carrying
19 out of any public function or purpose, so that the public interest in confi-
20 dentiality of such records substantially outweighs the public interest in
21 disclosure. Such exemption from disclosure shall be limited or conditioned
22 to the extent the Governor finds appropriate.

23 (b) Prior to the granting of any exemption under this subsection the
24 Governor shall hold a public hearing after notice as provided by ORS
25 183.335, or he may designate the Attorney General to hold the required
26 hearing.

27 (c) An exemption granted under this subsection shall expire upon
28 adjournment of the 1975 regular session of the Legislative Assembly.

29 **SECTION 12.** (1) For purposes of this section, "governing body" means
30 any public board, bureau, commission, committee or subcommittee con-
31 sisting of two or more members, which has authority to make decisions or
32 recommendations on policy or administration for or to a public body.

33 (2) It is the policy of this state that every governing body having ad-

1 visory, legislative or rulemaking functions shall make decisions on the
2 basis of open discussions at public meetings.

3 (3) Except as specifically permitted by this section, no governing body
4 may exclude the public from any meeting at which it transacts or discusses
5 public business.

6 (4) Every public body shall give notice to the public, reasonably
7 designed to give actual notice to all interested persons, of the time and
8 place of meetings at which it will transact or discuss public business. In the
9 case of any emergency meeting or meeting held on necessarily short notice,
10 such notice shall be appropriate to the circumstances. No governing body or
11 quorum thereof shall meet privately for the purpose of conducting or dis-
12 cussing public business.

13 (5) When private communications among or staff communications with
14 the members of a governing body substantially form the basis for a decision,
15 the substance of such communications shall be disclosed at public meetings.

16 (6) A governing body may close that portion of a meeting or hearing
17 in which it is solely engaged in one or more of the following:

18 (a) Labor negotiations and matters related directly thereto;

19 (b) Deliberations on the appointment (other than to fill a vacancy
20 in elective office), employment or dismissal of a particular public officer
21 or employe, or hearings on complaints or charges brought against such
22 officer or employe unless the officer or employe requests a public hearing; or

23 (c) Preliminary negotiations involving matters of trade or commerce
24 in which the governmental body, or public body of which it is a part or to
25 which it reports, is in competition with public bodies of other states or
26 nations.

27 (7) Before holding a closed meeting or hearing under subsection (6)
28 of this section the governing body shall give notice thereof, which will be
29 deemed sufficient if stated in a previous meeting or hearing or a portion
30 of the same meeting or hearing which is open to the public, or if furnished
31 to one or more newspapers of general circulation in the community prior
32 to the day of the closed meeting, and if it specifies the paragraph or para-
33 graphs of subsection (6) of this section which authorizes closing the meet-
34 ing or hearing.

1 (8) A governing body may also:

2 (a) Exclude any witness who is not a party from a hearing during
3 examination of another witness in the matter being investigated; or

4 (b) Expel or exclude any person from a meeting or hearing when
5 necessary to preserve order.

6 (9) Nothing in this section shall be construed to affect the deliberations
7 of grand juries.

8 (10) Any person may commence a suit in the circuit court for the
9 county in which the governing body ordinarily meets, to enjoin violations
10 or threatened violations of this section by a governing body.

11 Section 13. ORS 44.040 is amended to read:

12 44.040. (1) There are particular relations in which it is the policy of
13 the law to encourage confidence, and to preserve it inviolate; therefore a
14 person cannot be examined as a witness in the following cases:

15 (a) A husband shall not be examined for or against his wife without
16 her consent, or a wife for or against her husband without his consent; nor
17 can either, during the marriage or afterwards, be, without the consent of
18 the other, examined as to any communication made by one to the other dur-
19 ing the marriage. The exception does not apply to a civil action, suit or
20 proceeding, by one against the other, or to a criminal action or proceeding
21 for a crime committed by one against the other.

22 (b) An attorney shall not, without the consent of his client, be examined
23 as to any communication made by the client to him, or his advice given
24 thereon, in the course of professional employment.

25 (c) A priest or clergyman shall not, without the consent of the person
26 making the confession, be examined as to any confession made to him in
27 his professional character, in the course of discipline enjoined by the
28 church to which he belongs.

29 (d) A regular physician or surgeon shall not, without the consent of
30 his patient, be examined in a civil action, suit or proceeding, as to any
31 information acquired in attending the patient, which was necessary to
32 enable him to prescribe or act for the patient.

1 [(e) A public officer shall not be examined as to communications made
2 to him in official confidence, when the public interest would suffer by the
3 disclosure.]

4 [(f)] (e) A stenographer shall not, without the consent of his or her
5 employer, be examined as to any communication or dictation made by
6 the employer to him or her in the course of professional employment.

7 [(g)] (f) A licensed professional nurse shall not, without the consent
8 of a patient who was cared for by such nurse, be examined in a civil action,
9 suit or proceeding, as to any information acquired in caring for the patient,
10 which was necessary to enable the nurse to care for the patient.

11 [(h)] (g) A certified psychologist, as defined in ORS 675.010, shall
12 not, without the consent of his client, be examined as to any communication
13 made by the client to him, or his advice given thereon, in the course of his
14 professional employment.

15 [(i)] (h) A certificated staff member of an elementary or secondary
16 school shall not be examined in any civil action, suit or proceeding, as to
17 any conversation between the certificated staff member and a student
18 which relates to the personal affairs of the student or his family, and
19 which if disclosed would tend to damage or incriminate the student or
20 his family. Any violation of the privilege provided by this section may
21 result in the suspension of certification of the professional staff member
22 as provided in ORS 342.175 to 342.185.

23 (2) If a party to the action, suit or proceeding offers himself as a
24 witness, it is deemed a consent to the examination also of a wife, husband,
25 attorney, clergyman, physician or surgeon, stenographer, licensed profes-
26 sional nurse, certified psychologist or certificated staff member on the
27 same subject.

28 Section 14. ORS 59.680 is amended to read:

29 59.680. In addition to the filing of the bond required under ORS 59.670,
30 every such person shall file with the Corporation Commissioner, on or
31 before the 10th day of each month, a verified statement showing the
32 total amount of money received by him on account of the sale of outstand-
33 ing and unredeemed shares theretofore issued by him and which were in
34 force on the last day of the preceding month. This statement shall also set

1 forth the name and address of every person who during the preceding
2 month became a purchaser of any such share, together with the amount of
3 money collected thereon and paid or to be paid therefor. [*The statement*
4 *shall not be a public record, but shall be only for the information of the*
5 *Corporation Commissioner and shall not be divulged by him or by anyone*
6 *having access thereto except in court proceedings involving violation of*
7 *ORS 59.670 or 59.680.*] At the time of filing this sworn statement, such
8 person shall also deposit with the State Treasurer cash or securities speci-
9 fied as authorized investments for domestic insurance companies under the
10 insurance laws of this state, in a sum at least equal in value, when added
11 to the securities previously deposited by any such person with the State
12 Treasurer, to 50 percent of the total amount theretofore received by such
13 person on account of such shares. If at any time the securities so deposited
14 are in excess of 50 percent of the amount received in account of the then
15 outstanding and unredeemed shares such person may withdraw the excess,
16 and the State Treasurer is directed to return the excess to the person de-
17 positing it. The securities so deposited shall be for the protection of all
18 purchasers, or holders, of any such shares from the respective persons
19 making the deposit, but a deposit by any such person hereunder shall be
20 security only for the performance of his own contract as evidenced by
21 the share sold and disposed of by him. The cash or securities, together with
22 all accrued interest or dividends, shall be held and disposed of in the
23 manner provided by law in respect to cash or securities deposited with the
24 State Treasurer; and he shall be entitled to collect the fees authorized
25 pursuant to state law pertaining to and regulating title insurance.

26 Section 15. ORS 146.780 is amended to read:

27 146.780. (1) Every medical investigator who receives a report under
28 ORS 146.750 shall immediately report by telephone to the Chief Medical
29 Investigator and shall record the details of the report on a form provided
30 by the office of the Chief Medical Investigator and shall send a copy of
31 the completed form to the Chief Medical Investigator.

32 (2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections
33 2 to 11 of this 1973 Act relating to confidentiality and accessibility for pub-

1 lic inspection of public records [*and public documents*] , records and reports
2 compiled under the provisions of this section are confidential and are not
3 accessible for public inspection.

4 Section 16. ORS 181.540 is amended to read:

5 181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170]
6 **sections 2 to 11 of this 1973 Act** relating to confidentiality and accessibility
7 for public inspection of public records [*and public documents*] , finger-
8 prints, photographs, records and reports compiled under the provisions of
9 ORS 181.510 to 181.530 are confidential and are not accessible for public
10 inspection except as provided in subsection (2) of ORS 181.065, or as ordered
11 by a court.

12 Section 17. ORS 255.015 is amended to read:

13 255.015. [(1) *The provisions of ORS 192.005 to 192.170 notwithstanding*
14 *voters' pamphlet material shall be available to the public as provided in*
15 *subsection (2) of this section.*]

16 [(2)] After the 65th day prior to the date of the primary or general
17 election the Secretary of State shall, upon request, make available **to any**
18 **person** voters' pamphlet material filed pursuant to the provisions contained
19 in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

20 Section 18. ORS 274.745 is amended to read:

21 274.745. (1) Records of drilling conducted by a permittee under ORS
22 274.740 shall be filed by the permittee with the State Department of Geology
23 and Mineral Industries as prescribed by ORS 520.095. [*Such records shall be*
24 *treated as confidential for a period of five years from the date of filing*
25 *unless the permittee authorizes their earlier release.*]

26 (2) The division may require, as a condition to the issuance of any lease
27 under ORS 274.705 to 274.860, that the lessee make available to the division,
28 or the State Department of Geology and Mineral Industries upon request,
29 all factual and physical exploration results, logs and records resulting from
30 the operations under the lease. [*Any such factual or physical exploration*
31 *results, logs or records which the lessee is required to make available to the*
32 *division and the department shall not be open to inspection by any other*
33 *person or agency without the written consent of the lessee.*]

1 [(3) No member of the Department of Geology and Mineral Industries,
2 officer or employe thereof, or any person performing any function or work
3 assigned to him by the department, shall disclose to any person who is not
4 a member, officer, employe of the department or to any person who is not
5 performing any function or work assigned to him by the department, any
6 information obtained from the inspection of such factual or physical explor-
7 ation results, logs or records, or use such information for purposes other
8 than the administration of the functions, responsibilities, and duties vested
9 in the department by law, except upon the written consent of the permittee
10 or lessee making such information available to the department.]

11 Section 19. ORS 341.290 is amended to read:

12 341.290. The board of education of a community college district shall
13 be responsible for the general supervision and control of any and all com-
14 munity colleges operated by the district. Consistent with any applicable
15 rules and regulations of the State Board of Education, the board may:

16 (1) Subject to ORS chapter 237, employ administrative officers, pro-
17 fessional personnel and other employes, define their duties, terms and
18 conditions of employment and prescribe compensation therefor.

19 (2) Enact rules for the government of the community college, including
20 professional personnel and other employes thereof and students therein.

21 (3) Prescribe the educational program.

22 (4) Control use of and access to the grounds, buildings, books, equip-
23 ment and other property of the district.

24 (5) Acquire, receive, hold control, convey, sell, manage, operate, lease,
25 lease-purchase, lend, invest, improve and develop any and all property of
26 whatever nature given to or appropriated for the use, support or benefit
27 of any activity under the control of the board, according to the terms and
28 conditions of such gift or appropriation.

29 (6) Purchase real property upon a contractual basis when the period
30 of time allowed for payment under the contract does not exceed five years.

31 (7) Subject to ORS chapter 279, purchase relocatable classrooms and
32 other relocatable structures in instalment transactions in which deferred
33 instalments of the purchase price are payable over not more than 10 years

1 from the date such property is delivered to the district for occupancy and
2 are secured by a security interest in such property. Such transactions
3 may take the form of, but are not limited to lease-purchase agreements.

4 (8) Establish, lease for not more than 10 years with or without an
5 option to purchase, operate, equip and maintain food service facilities,
6 bookstores and other revenue producing facilities connected with the oper-
7 ation of the community college.

8 (9) Fix standards of admission to the community college, prescribe and
9 collect tuition for admission to the community college, including fixing
10 different tuition rates for students who reside in the district, students who
11 do not reside in the district but are residents of the state and students who
12 do not reside in the state.

13 (10) Prescribe and collect fees and expend funds so raised for special
14 programs and services for the students and for programs for the cultural
15 and physical development of the students.

16 (11) Provide and disseminate to the public information relating to the
17 program, operation and finances of the community college.

18 (12) Establish or contract for advisory and consultant services.

19 (13) Take, hold and dispose of mortgages on real and personal property
20 acquired by way of gift or arising out of transactions entered into in ac-
21 cordance with the powers, duties and authority of the board and institute,
22 maintain and participate in suits and actions and other judicial proceedings
23 in the name of the district for the foreclosure of such mortgages.

24 (14) Maintain programs, services and facilities, and, in connection
25 therewith, cooperate and enter into agreements with any person or public
26 or private agency.

27 (15) Provide student services including health, guidance, counseling
28 and placement services, and contract therefor.

29 (16) Join appropriate associations and pay any required dues therefor
30 from resources of the district.

31 (17) Apply for federal funds and accept and enter into any contracts
32 or agreements for the receipt of such funds from the Federal Government
33 or its agencies for educational purposes.

1 (18) Exercise any other power, duty or responsibility necessary to
2 carry out the functions under this section or required by law.

3 (19) Prescribe rules for the use and access to public records of the
4 district that are consistent with [ORS 192.030] sections 2 to 11 of this 1973
5 Act. [*However, the following records shall not be made available to public*
6 *inspection for any purpose except with the consent of the person who is*
7 *the subject of the record, student or faculty, or upon order of a court of*
8 *competent jurisdiction:*]

9 [(a) *Student records relating to matters such as grades, conduct, per-*
10 *sonal and academic evaluations, results of psychometric testing, disciplinary*
11 *actions, if any, and other personal matters.*]

12 [(b) *Faculty records relating to matters such as conduct, personal and*
13 *academic evaluations, disciplinary actions, if any, and other personal mat-*
14 *ters.*]

15 Section 20. ORS 342.850 is amended to read:

16 342.850. (1) The district superintendent of every common and union
17 high school district having an average daily membership, as defined in
18 ORS 327.006, of more than 500 students in the district shall cause to have
19 made at least annually an evaluation of performance for each teacher em-
20 ployed by the district in order to allow the teacher and the district to
21 measure the teacher's development and growth in the teaching profession.
22 A form shall be prescribed by the State Board of Education and completed
23 pursuant to rules adopted by the district school board. The person or
24 persons making the evaluations must hold teaching certificates. The evalu-
25 ation shall be signed by the school official who supervises the teacher and
26 by the teacher. A copy of the evaluation shall be delivered to the teacher.

27 (2) The annual evaluation reports shall be maintained in the person-
28 nel files of the district.

29 (3) The annual evaluation report shall be placed in the teacher's per-
30 sonnel file only after reasonable notice to the teacher. Any explanation
31 relating to the evaluation which the teacher desires to make shall be
32 placed in the personnel file.

1 *[(4) The personnel file shall be open for inspection by such teacher*
2 *but shall be open only to such other persons as are officially designated by*
3 *the board or by the teacher, in accordance with such rules and regula-*
4 *tions as the board shall adopt.]*

5 Section 21. ORS 432.115 is amended to read:

6 432.115. The State Registrar and county registrars shall, upon request,
7 *[subject to ORS 432.120,]* furnish to any applicant a certified copy of the
8 original certificates, or any parts thereof, filed in his office, or permit their
9 inspection. However, a certified copy of a copy of a certificate may not be
10 issued, except that the county registrar shall certify or permit the inspec-
11 tion of any abstract of death certificate on file in his office.

12 Section 22. ORS 476.090 is amended to read:

13 476.090. (1) The State Fire Marshal shall keep in his office a record
14 of all fires occurring in this state and of all facts concerning the same,
15 including statistics as to the extent of such fires and the damage caused,
16 whether such losses were covered by insurance, and if so, in what amount.
17 The record shall be made daily from the reports made to him by his assist-
18 ants. *[All such records shall be public, except any testimony taken in an*
19 *investigation under the provisions of ORS 476.010 to 476.100, 476.210 to*
20 *476.270 and 479.180, which the State Fire Marshal, in his discretion, may*
21 *withhold from the public.]*

22 (2) This section shall not apply to forest lands under the jurisdiction
23 of the State Forester.

24 Section 23. ORS 483.610 is amended to read:

25 483.610. *[(1) All accident reports made to the Motor Vehicles Division*
26 *or to any sheriff, chief of police or other authorized agent shall be without*
27 *prejudice to the individual so reporting and shall be for the confidential*
28 *use of state administrative and enforcement agencies.]*

29 *[(2) The Motor Vehicles Division, upon written request, shall, if avail-*
30 *able, disclose the following information to any party involved in the acci-*
31 *dent, or, in the event of his death, to any member of his family, or his*
32 *personal representatives:]*

33 *[(a) The identity of the owner, driver, occupants and the license num-*
34 *ber of a motor vehicle involved in an accident;]*

1 [(b) *The names of any companies insuring said owner or driver; and]*

2 [(c) *The identity of any witnesses to said accident.*]

3 [(3) *No such report shall be used as evidence in any trial, civil or*
4 *criminal, arising out of an accident. The Motor Vehicles Division shall*
5 *furnish upon demand of any person who has, or claims to have, made such*
6 *a report or, upon demand of any court, a certificate showing that a specified*
7 *accident report has or has not been made to the Motor Vehicles Division,*
8 *solely to prove a compliance or a failure to comply with the requirement*
9 *that such a report be made to the division.*]

10 [(4)] (1) The Motor Vehicles Division shall tabulate and may ana-
11 lyze all accident reports and shall publish annually, or at more frequent
12 intervals, statistical information based thereon as to the number and cir-
13 cumstances of traffic accidents.

14 [(5)] (2) Any incorporated city may by ordinance require that the
15 driver of a vehicle involved in an accident file with a designated city
16 department a report of such accident or a copy of any report required to
17 be filed under ORS 483.606. [*All such reports shall be for the confidential*
18 *use of the city department but subject to the provisions of subsections (1)*
19 *and (2) of this section.*]

20 Section 24. ORS 522.510 is amended to read:

21 522.510. (1) The owner or operator of any well shall keep, or cause
22 to be kept, a careful and accurate log, core record and history of the drill-
23 ing of the well.

24 (2) The log referred to in subsection (1) of this section shall show the
25 character and depth of each formation encountered in the drilling of the
26 well; the amount, size and weight of casing used; and the location, depth
27 and temperature of water-bearing strata, including the temperature, chemi-
28 cal composition and other chemical and physical characteristics of fluid
29 encountered from time to time.

30 (3) The core record referred to in subsection (1) of this section shall
31 show the depth, character and fluid content of cores obtained, so far as
32 determined from the study and analysis thereof.

33 (4) The history referred to in subsection (1) of this section shall show
34 the location and amount of sidetracked casings, tools or other material;

1 the depth and quantity of cement in cement plugs; the shots of dynamite
2 or other explosives used; the results of production and other tests during
3 drilling operations and completion data.

4 (5) The log referred to in subsections (1) and (2) of this section shall
5 be kept in the local office of the owner or operator and, together with the
6 tour reports of the owner or operator, shall be subject, during business
7 hours, to inspection by the board, the supervisor or his authorized deputy [;
8 *except, any log kept with respect to a prospect well*].

9 Section 25. ORS 522.520 is amended to read:

10 522.520. Each owner or operator of any well **or prospect well** or his
11 designated agent shall file with the supervisor a copy of the log, history
12 and core record, or any portion thereof, **promptly upon completion, or**
13 **upon the written request of the supervisor or his authorized deputy** at any
14 time after the commencement, of the work of drilling any well [*other*
15 *than a*] **or prospect well** [*upon the written request of the supervisor or*
16 *his authorized deputy*] **and upon the abandonment or upon suspension of**
17 **operations conducted with respect to any well for a period of at least six**
18 **months**. The request shall be signed by the supervisor or the deputy and
19 served **upon** such owner, operator or agent either personally or by mail-
20 ing a copy of the request by [*registered*] **certified** mail to the last-known
21 post-office address of such owner, operator or agent.

22 Section 26. ORS 561.265 is amended to read:

23 561.265. (1) The department upon not less than three days notice in
24 writing is authorized to inspect and audit, during regular business hours,
25 necessary and applicable books and records of any person required by law
26 to report or pay fees or moneys to the department. Such inspection is for
27 the purpose of determining whether proper fees have been paid.

28 (2) "Fees" as used in this section includes fees due the department
29 by a person, each month, year, or other fixed time or period, the amount
30 of which is based upon the quantity, volume, weight or other measurement
31 of some article, product or commodity and such fees to be used by the
32 department in carrying out or enforcing a law under its jurisdiction. "Fees"
33 does not include a license fee, the exact amount of which is fixed by law.

1 *[(3) Information obtained by the department under the provisions of*
2 *this section shall not be a public record.]*

3 Section 27. ORS 573.350 is amended to read:

4 573.350. (1) Each person responsible for the payment of the fees
5 required by ORS 573.340 shall file a report with the department on October
6 1, January 1, April 1 and July 1 of each year in which payment of the
7 fees is required of the number of pounds of such herbicides sold, used or
8 consumed during the three calendar months immediately preceding the
9 date the report is due. The proper poundage fee shall be remitted with the
10 report. The person required to file the report and pay the fee shall have
11 a 15-day period of grace, immediately following the day the report and
12 payment are due, to file the report and pay the fee.

13 (2) No user or consumer of such herbicides is required to file a report
14 if the herbicides have been purchased from a manufacturer, jobber, broker
15 or wholesaler who is responsible for the payment of the fee on poundage
16 sold or from a retailer doing business in this state.

17 *[(3) The report required by this section shall not be a public record;*
18 *however, the board or the department may prepare and publish from its*
19 *records such statistics and information as it deems advisable and which*
20 *will not reveal any confidential information.]*

21 Section 28. ORS 547.120 is amended to read:

22 547.120. The board of supervisors immediately after its election shall
23 choose one of its number president of the board, and elect some suitable
24 person secretary, who may or may not be a member of the board. The
25 board shall adopt a seal with a suitable design, and shall keep a record of all
26 its proceedings [, which shall be open to the inspection of all owners of
27 real estate of the district, as well as to all other interested persons] . The
28 board shall report to the landowners at the annual meeting held under
29 the provision of ORS 547.110 what work has been done, either by the
30 engineers or otherwise. Notwithstanding the provisions of ORS 198.190,
31 if the secretary is a member of the board he shall be entitled to compen-
32 sation as provided for in ORS 547.125.

1 Section 29. ORS 576.024 is amended to read:

2 576.024. (1) It is necessary for the economy of this state, the livestock
3 industry and the welfare of the consuming public that the department ob-
4 tain statistical information for economic studies of the livestock industry
5 including the volume of production of livestock in this state; the chan-
6 nels into which such livestock is marketed; the total consumption of meat
7 in this state; the types and quantities consumed and the sources thereof;
8 and such other information as is pertinent to reveal additional potential
9 markets for livestock produced in this state.

10 (2) In order to carry out and maintain this continuing study, the de-
11 partment is authorized during business hours to inspect the records of
12 places or businesses which handle, store or sell meat animals, or meat as
13 defined in ORS 619.610. *[Such data and information shall not be a public*
14 *record. The department however may release or use such data or informa-*
15 *tion.]*

16 *[(a) When necessary in preparation or publishing statistics as are*
17 *necessary to carry out the purpose and intent of this section but which*
18 *shall not reveal any confidential data or information of the identity of*
19 *specific or particular places of business or establishments.]*

20 *[(b) When necessary in carrying out the responsibilities of the de-*
21 *partment under laws under its supervision and jurisdiction.]*

22 (3) The department, after public hearing under ORS chapter 183, may
23 require periodic reporting from the places or businesses described in this
24 section and require the furnishing to the department of the data or infor-
25 mation which may be needed in continuing the comprehensive study as
26 authorized in this section.

27 Section 30. ORS 576.395 is amended to read:

28 576.395. *[(1)]* The commission shall keep accurate books, records and
29 accounts of all its dealings which shall be open to inspection and audit by
30 the Secretary of State.

31 *[(2) The amount of assessment moneys paid to the commission and*
32 *reports or information filed with the commission by a first purchaser or*
33 *producer under ORS 576.051 to 576.584 are not a public record.]*

34 Section 31. ORS 577.826 is amended to read:

1 577.826. (1) After a petition is received or a written request is re-
2 ceived from the council as authorized by ORS 577.810, all persons eligible to
3 vote may vote in the referendum provided they register with the depart-
4 ment their names and such other pertinent information as is required.
5 The department shall provide a period of not less than 20 days during
6 which such persons may register. [*Only the names and addresses of the*
7 *persons who register are public record.*] The department thereafter shall
8 compile and file the list of persons eligible to vote, in the Salem office of
9 the department and may publish such list as it deems necessary for the
10 benefit of producers.

11 (2) Within 60 days after the list is filed, the department shall conduct
12 the referendum.

13 Section 32. ORS 578.190 is amended to read:

14 578.190. [(1)] The commission shall keep accurate books, records and
15 accounts of all its dealings which shall be open to inspection and audit by
16 the Secretary of State.

17 [(2) *The amount of assessment moneys paid to the commission and*
18 *reports or information filed with the commission by a first purchaser or*
19 *grower under this chapter are not a public record.*]

20 Section 33. ORS 579.185 is amended to read:

21 579.185. [(1)] The commission shall keep accurate books, records and
22 accounts of all its dealings which shall be open to inspection and audit
23 by the Secretary of State.

24 [(2) *The amount of assessment moneys paid to the commission and*
25 *reports or information filed with the commission by a first purchaser or*
26 *grower under this chapter are not a public record.*]

27 **SECTION 34.** ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,
28 399.220, 432.120, 432.130, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464,
29 619.825, 656.702, 696.580, 697.220, 697.725, 721.050 and 744.017 are repealed.

30 **SECTION 35.** This Act being necessary for the immediate preservation
31 of the public peace, health and safety, an emergency is declared to exist,
32 and this Act takes effect July 1, 1973.

A BILL FOR

AN ACT

Relating to public disclosure by public bodies of public

matters; creating new provisions; amending ORS 44.040,

59.680, 146.780, 181.540, 255.015, 274.745, 341.290,

342.850, 432.115, 476.090, 483.610, 522.510, 522.520, 547.120,

561.265, 573.350, ~~574.120~~, ~~576.017~~, 576.024, 576.395,

577.826, 578.190, ^{and} 579.185; ~~583.464 and 619.825~~, repealing

ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120,

399.220, 432.120, 432.130, 471.785, 508.545, 522.530,

522.540, ^{576.017}, 583.464, 619.825, 656.702, 696.580, 697.220,

697.725, 721.050 and 744.017; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

Section 1. Sections 2 to 12 of this Act are added to
and made a part of ORS chapter 192.

Section 2. As used in this ¹⁹⁹³ Act:

(1) "Public body" includes every state officer, agency, department, division, bureau, board, and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

af Section 3. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ~~Section 11~~ ¹⁹⁷³ of this Act. *cc*

af Section 4. The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

af Section 5. (1) The custodian of any public record which a person has a right to inspect is bound to give him,

on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy. Computer data shall be provided in a form determined by the public body.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available.

4/ Section 6. (1) Subject to section 8 of this ¹⁹⁷⁵ Act, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within three business days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency may institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for

the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

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Section 7. Section 6 of this Act is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body in the cases permitted under subsection (3) of section 6, unless he ordinarily serves as counsel for it. *if this 1973 act*

Section 8. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the privilege of non-disclosure, no petition to require dis-

closure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of privilege by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in section ~~5 or 6~~^{6 or 7} of this ~~Act~~¹⁹⁷³, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed.

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by Section 9. (1) In any suit filed under sections ~~6 or 7~~^{6 or 7} of this ~~Act~~¹⁹⁷³, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under sections ~~6 or 7~~^{6 or 7} of this ~~Act~~¹⁹⁷³ take precedence on the docket over all other causes

and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded his reasonable attorney's fees. If such person prevails in part, the court may in its discretion award him his reasonable attorney's fees, or an appropriate portion thereof.

up Section 10. (1) A petition to the Attorney General or district attorney requesting him to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

Unreless _____
_____ (date)
I (we), _____ (name(s)), the undersigned, request *REGM*
the Attorney General (or District Attorney of _____ County)
to order _____ (name of governmental body) and its employees
to (make available for inspection) (produce a copy or copies
of) the following records:

1. (Name or description of record)
2. (Name or description of record)

I (we) asked to inspect and/or copy these records on
_____ (date) at _____ (address). The request was denied
by the following person(s):

1. (Name of public officer or employee; title or position,
if known)

2. (Name of public officer or employee; title or position,
if known)

(Signature(s))

Handwritten: *first* → This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General.

Yip Section 11. (1) The following public records are exempt from disclosure under this ¹⁹⁷³ Act unless the public interest requires disclosure in the particular instance:

(a) Communications within a governmental body or between governmental bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the

public interest in encouraging frank communication between officials and employes of governmental bodies clearly outweighs the public interest in disclosure;

(b) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(c) Information of a personal nature such as that kept in a personnel, medical or similar file, if the public disclosure thereof would ^{constitute} ~~constitute~~ an unreasonable invasion of personal privacy;

(d) Information submitted to a governmental body in confidence and not otherwise required by law to be submitted, unless the public interest in disclosure clearly outweighs the public and private interest in nondisclosure;

(e) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate

minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(f) Investigatory information compiled for criminal law purposes. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(i) Information relating to the appraisal of real estate prior to its acquisition;

(j) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(k) Reports made to or filed with the court under ORS 137.075 or 137.530;

(L) Information or records of the Corrections Division, including the ~~State~~ Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality of such information or records clearly outweighs the public interest in disclosure;

(m) Public records or information the disclosure of which is prohibited or restricted, or which is otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 44.040, 146.780, 173.230, 179.495, 181.540, 306.129, 314.835, 314.840, 336.195, 351.065, 411.320, 418.770, 419.567, 432.060, 432.425, 432.430, 474.160 or 657.665.

(2) If any public record contains material which is not exempt under subsections (1) or (3) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(3) (a) Upon application of any public body prior to convening of the 1975 regular session of the Legislative Assembly, the Governor may exempt any class of public records, in addition to the classes specified in subsection (1) of this section, from disclosure under this ¹⁹⁷³ Act unless the public interest requires disclosure in the particular instance, if he finds that the class of public records for which exemption is sought is such that unlimited public access thereto would sub-

stantially prejudice or prevent the carrying out of any public function or purpose, so that the public interest in confidentiality of such records substantially outweighs the public interest in disclosure. Such exemption from disclosure shall be limited or conditioned to the extent the Governor finds appropriate.

(b) Prior to the granting of any exemption under this subsection the Governor shall hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(c) Any exemption granted under this subsection shall expire upon adjournment of the 1975 regular session of the Legislative Assembly.

Section 12. (1) For purposes of this section, "governing body" means any public board, bureau, commission, committee, or subcommittee consisting of two or more members, which has authority to make decisions or recommendations on policy or administration for or to a public body.

(2) It is the policy of this state that every governing body having advisory, legislative or rulemaking functions shall make decisions on the basis of open discussions at public meetings.

(3) Except as specifically permitted by this section, no governing body may exclude the public from any meeting at which it transacts or discusses public business.

(4) Every public body shall give notice to the public, reasonably designed to give actual notice to all interested

persons, of the time and place of meetings at which it will transact or discuss public business. In the case of any emergency meeting or meeting held on necessarily short notice, such notice shall be appropriate to the circumstances. No governing body or quorum thereof shall meet privately for the purpose of conducting or discussing public business.

(5) When private communications among or staff communications with the members of a governing body substantially form the basis for a decision, the substance of such communications shall be disclosed at public meetings.

(6) A governing body may close that portion of a meeting or hearing in which it is solely engaged in one or more of the following:

(a) Labor negotiations and matters related directly thereto;

(b) Deliberations on the appointment (other than to fill a vacancy in elective office), employment or dismissal of a particular public officer or employee, or hearings on complaints or charges brought against such officer or employee unless the officer or employee requests a public hearing; or

(c) Preliminary negotiations involving matters of trade or commerce in which the governmental body, or public body of which it is a part or to which it reports, is in competition with public bodies of other states or nations.

(7) Before holding a closed meeting or hearing under subsection (6) of this section the governing body shall give notice thereof, which will be deemed sufficient if stated in

a previous meeting or hearing or a portion of the same meeting or hearing which is open to the public, or if furnished to one or more newspapers of general circulation in the community prior to the day of the closed meeting, and if it specifies the paragraph or paragraphs of subsection (6) of this section which authorizes closing the meeting or hearing.

(8) A governing body may also:

(a) Exclude any witness who is not a party from a hearing during examination of another witness in the matter being investigated; or

(b) Expel or exclude any person from a meeting or hearing when necessary to preserve order.

(9) Nothing in this section shall be construed to affect the deliberations of grand juries.

(10) Any person may commence a suit in the circuit court for the county in which the governing body ordinarily meets, to enjoin violations or threatened violations of this section by a governing body.

Section 13. ORS 44.040 is amended to read:

44.040. (1) There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

(a) A husband shall not be examined for or against his wife without her consent, or a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. The exception does not apply to a civil action, suit or proceeding, by one against the other, or to a criminal action or proceeding for a crime committed by one against the other.

(b) An attorney shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

(c) A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

(d) A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action, suit or proceeding, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

[(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.]

[(f)] (e) A stenographer shall not, without the consent of his or her employer, be examined as to any communication or dictation made by the employer to him or her in the course of professional employment.

[(g)] (f) A licensed professional nurse shall not, without the consent of a patient who was cared for by such nurse, be examined in a civil action, suit or proceeding, as to any information acquired in caring for the patient, which was necessary to enable the nurse to care for the patient.

[(h)] (g) A certified psychologist, as defined in ORS 675.010, shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon, in the course of his professional employment.

[(i)] (h) A certificated staff member of an elementary or secondary school shall not be examined in any civil action, suit or proceeding, as to any conversation between the certificated staff member and a student which

relates to the personal affairs of the student or his family, and which if disclosed would tend to damage or incriminate the student or his family. Any violation of the privilege provided by this section may result in the suspension of certification of the professional staff member as provided in ORS 342.175 to 342.185.

(2) If a party to the action, suit or proceeding offers himself as a witness, it is deemed a consent to the examination also of a wife, husband, attorney, clergyman, physician or surgeon, stenographer, licensed professional nurse, certified psychologist or certificated staff member on the same subject.

Section 14. ORS 59.680 is amended to read:

59.680. In addition to the filing of the bond required under ORS 59.670, every such person shall file with the Corporation Commissioner, on or before the 10th day of each month, a verified statement showing the total amount of money received by him on account of the sale of outstanding and unredeemed shares theretofore issued by him and which were in force on the last day of the preceding month. This statement shall also set forth the name and address of every person who during the preceding month became a purchaser of any such share, together with the amount of money collected thereon and paid or to be paid therefor. [The statement shall not be a public record, but shall be only for the information of the Corporation Commissioner and shall not be divulged by him or by anyone having access thereto except in

court proceedings involving violation of ORS 59.670 or 59.680.] At the time of filing this sworn statement, such person shall also deposit with the State Treasurer cash or securities specified as authorized investments for domestic insurance companies under the insurance laws of this state, in a sum at least equal in value, when added to the securities previously deposited by any such person with the State Treasurer, to 50 percent of the total amount theretofore received by such person on account of such shares. If at any time the securities so deposited are in excess of 50 percent of the amount received on account of the then outstanding and unredeemed shares such person may withdraw the excess, and the State Treasurer is directed to return the excess to the person depositing it. The securities so deposited shall be for the protection of all purchasers, or holders, of any such shares from the respective persons making the deposit, but a deposit by any such person hereunder shall be security only for the performance of his own contract as evidenced by the share sold and disposed of by him. The cash or securities, together with all accrued interest or dividends, shall be held and disposed of in the manner provided by law in respect to cash or securities deposited with the State Treasurer, and he shall be entitled to collect the fees authorized pursuant to state law pertaining to and regulating title insurance.

Section 15. ORS 146.780 is amended to read:

146.780. (1) Every medical investigator who receives

a report under ORS 146.750 shall immediately report by telephone to the Chief Medical Investigator and shall record the details of the report on a form provided by the office of the Chief Medical Investigator and shall send a copy of the completed form to the Chief Medical Investigator.

(2) Notwithstanding the provisions of [ORS 192.005 to 192.170] sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility for public inspection of public records [and public documents], records and reports compiled under the provisions of this section are confidential and are not accessible for public inspection.

Section 16. ORS 181.540 is amended to read:

181.540. Notwithstanding the provisions of [ORS 192.005 to 192.170] sections 2 to 11 of this 1973 Act relating to confidentiality and accessibility for public inspection of public records [and public documents], fingerprints, photographs, records and reports compiled under the provisions of ORS 181.510 to 181.530 are confidential and are not accessible for public inspection except as provided in subsection (2) of ORS 181.065, or as ordered by a court.

Section 17. ORS 255.015 is amended to read:

255.015. [(1) The provisions of ORS 192.005 to 192.170 notwithstanding, voters' pamphlet material shall be available to the public as provided in subsection (2) of this section.]

[(2)] After the 65th day prior to the date of the primary or general election the Secretary of State shall, upon request, make available to any person voters' pamphlet material

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filed pursuant to the provisions contained in ORS 255.031 and subsections (1) and (2) of ORS 255.211.

Section 18. ORS 274.745 is amended to read:

274.745. (1) Records of drilling conducted by a permittee under ORS 274.740 shall be filed by the permittee with the State Department of Geology and Mineral Industries as prescribed by ORS ^{520.095}~~520.090~~. [Such records shall be treated as confidential for a period of five years from the date of filing unless the permittee authorizes their earlier release.]

(2) The division may require, as a condition to the issuance of any lease under ORS 274.705 to 274.860, that the lessee make available to the division, or the State Department of Geology and Mineral Industries, upon request, all factual and physical exploration results, logs and records resulting from the operations under the lease. [Any such factual or physical exploration results, logs or records which the lessee is required to make available to the division and the department shall not be open to inspection by any other person or agency without the written consent of the lessee.]

[(3) No member of the Department of Geology and Mineral Industries, officer or employe thereof, or any person performing any function or work assigned to him by the department, shall disclose to any person who is not a member, officer, employe of the department or to any person who is not performing any function or work assigned to him by the

department, any information obtained from the inspection of such factual or physical exploration results, logs or records, or use such information for purposes other than the administration of the functions, responsibilities, and duties vested in the department by law, except upon the written consent of the permittee or lessee making such information available to the department.]

Section 19. ORS 341.290 is amended to read:

341.290. The board of education of a community college district shall be responsible for the general supervision and control of any and all community colleges operated by the district. Consistent with any applicable rules and regulations of the State Board of Education, the board may:

(1) Subject to ORS chapter 237, employ administrative officers, professional personnel and other employees, define their duties, terms and conditions of employment and prescribe compensation therefor.

(2) Enact rules for the government of the community college, including professional personnel and other employees thereof and students therein.

(3) Prescribe the educational program.

(4) Control use of and access to the grounds, buildings, books, equipment and other property of the district.

(5) Acquire, receive, hold control, convey, sell, manage, operate, lease, lease-purchase, lend, invest, improve and develop any and all property of whatever nature

given to or appropriated for the use, support or benefit of any activity under the control of the board, according to the terms and conditions of such gift or appropriation.

(6) Purchase real property upon a contractual basis when the period of time allowed for payment under the contract does not exceed five years.

(7) Subject to ORS chapter 279, purchase relocatable classrooms and other relocatable structures in instalment transactions in which deferred instalments of the purchase price are payable over not more than 10 years from the date such property is delivered to the district for occupancy and are secured by a security interest in such property. Such transactions may take the form of, but are not limited to lease-purchase agreements.

(8) Establish, lease for not more than 10 years with or without an option to purchase, operate, equip and maintain food service facilities, bookstores and other revenue producing facilities connected with the operation of the community college.

(9) Fix standards of admission to the community college, prescribe and collect tuition for admission to the community college, including fixing different tuition rates for students who reside in the district, students who do not reside in the district but are residents of the state and students who do not reside in the state.

(10) Prescribe and collect fees and expend funds so raised for special programs and services for the students

and for programs for the cultural and physical development of the students.

(11) Provide and disseminate to the public information relating to the program, operation and finances of the community college.

(12) Establish or contract for advisory and consultant services.

(13) Take, hold and dispose of mortgages on real and personal property acquired by way of gift or arising out of transactions entered into in accordance with the powers, duties and authority of the board and institute, maintain and participate in suits and actions and other judicial proceedings in the name of the district for the foreclosure of such mortgages.

(14) Maintain programs, services and facilities, and, in connection therewith, cooperate and enter into agreements with any person or public or private agency.

(15) Provide student services including health, guidance, counseling and placement services, and contract therefor.

(16) Join appropriate associations and pay any required dues therefor from resources of the district.

(17) Apply for federal funds and accept and enter into any contracts or agreements for the receipt of such funds from the Federal Government or its agencies for educational purposes.

(18) Exercise any other power, duty or responsibility

necessary to carry out the functions under this section or required by law.

(19) Prescribe rules for the use and access to public records of the district that are consistent with [ORS 192.030] sections 2 to 11 of this 1973 Act. [However, the following records shall not be made available to public inspection for any purpose except with the consent of the person who is the subject of the record, student or faculty, or upon order of a court of competent jurisdiction:]

[(a) Student records relating to matters such as grades, conduct, personal and academic evaluations, results of psychometric testing, disciplinary actions, if any, and other personal matters.]

[(b) Faculty records relating to matters such as conduct, personal and academic evaluations, disciplinary actions, if any, and other personal matters.]

Section 20. ORS 342.850 is amended to read:

342.850. (1) The district superintendent of every common and union high school district having an average daily membership, as defined in ORS 327.006, of more than 500 students in the district shall cause to have made at least annually an evaluation of performance for each teacher employed by the district in order to allow the teacher and the district to measure the teacher's development and growth in the teaching profession. A form shall be prescribed by the State Board of Education and completed pursuant to rules adopted by the district school board. The person or per-

sons making the evaluations must hold teaching certificates. The evaluation shall be signed by the school official who supervises the teacher and by the teacher. A copy of the evaluation shall be delivered to the teacher.

(2) The annual evaluation reports shall be maintained in the personnel files of the district.

(3) The annual evaluation report shall be placed in the teacher's personnel file only after reasonable notice to the teacher. Any explanation relating to the evaluation which the teacher desires to make shall be placed in the personnel file.

[(4) The personnel file shall be open for inspection by such teacher but shall be open only to such other persons as are officially designated by the board or by the teacher, in accordance with such rules and regulations as the board shall adopt.]

Section 21. ORS 432.115 is amended to read:

432.115. The State Registrar and county registrars shall, upon request, [subject to ORS 432.120,] furnish to any applicant a certified copy of the original certificates, or any parts thereof, filed in his office, or permit their inspection. However, a certified copy of a copy of a certificate may not be issued, except that the county registrar shall certify or permit the inspection of any abstract of death certificate ^{on file} in his office.

Section 22. ORS 476.090 is amended to read:

476.090. (1) The State Fire Marshal shall keep in his office a record of all fires occurring in this state

and of all facts concerning the same, including statistics as to the extent of such fires and the damage caused, whether such losses were covered by insurance, and if so, in what amount. The record shall be made daily from the reports made to him by his assistants. [All such records shall be public, except any testimony taken in an investigation under the provisions of ORS 476.010 to 476.100, 476.210 to 476.270 and 479.180, which the State Fire Marshal, in his discretion, may withhold from the public.]

(2) This section shall not apply to forest lands under the jurisdiction of the State Forester.

Section 23. ORS 483.610 is amended to read:

483.610. [(1) All accident reports made to the Motor Vehicles Division or to any sheriff, chief of police or other authorized agent shall be without prejudice to the individual so reporting and shall be for the confidential use of state administrative and enforcement agencies.]

[(2) The Motor Vehicles Division, upon written request, shall, if available, disclose the following information to any party involved in the accident, or, in the event of his death, to any member of his family, or his personal representatives:]

[(a) The identity of the owner, driver, occupants and the license number of a motor vehicle involved in an accident;]

[(b) The names of any companies insuring said owner or driver; and]

[(c) The identity of any witnesses to said accident.]

[(3) No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident. The Motor Vehicles Division shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the Motor Vehicles Division, solely to prove a compliance or a failure to comply with the requirement that such a report be made to the division.]

[(4)] (1) The Motor Vehicles Division shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

[(5)] (2) Any incorporated city may by ordinance require that the driver of a vehicle involved in an accident file with a designated city department a report of such accident or a copy of any report required to be filed under ORS 483.606. [All such reports shall be for the confidential use of the city department but subject to the provisions of subsections (1) and (2) of this section.]

Section 24. ORS 522.510 is amended to read:

522.510. (1) The owner or operator of any well shall keep, or cause to be kept, a careful and accurate log, core record and history of the drilling of the well.

(2) The log referred to in subsection (1) of this section shall show the character and depth of each formation encountered in the drilling of the well; the amount, size and weight of casing used; and the location, depth and temperature of water-bearing strata, including the temperature, chemical composition and other chemical and physical characteristics of fluid encountered from time to time.

(3) The core record referred to in subsection (1) of this section shall show the depth, character and fluid content of cores obtained, so far as determined from the study and analysis thereof.

(4) The history referred to in subsection (1) of this section shall show the location and amount of sidetracked casings, tools or other material; the depth and quantity of cement in cement plugs; the shots of dynamite or other explosives used; the results of production and other tests

during drilling operations and completion data.

(5) The log referred to in subsections (1) and (2) of this section shall be kept in the local office of the owner or operator and, together with the tour reports of the owner or operator, shall be subject, during business hours, to inspection by the board, the supervisor or his authorized deputy [; except, any log kept with respect to a prospect well].

Section 25. ORS 522.520 is amended to read:

522.520. Each owner or operator of any well or prospect well or his designated agent⁸ shall file with the supervisor a copy of the log, history and core record, or any portion thereof, promptly upon completion, or upon the written request of the supervisor or his authorized deputy at any time after the commencement, of the work of drilling any well [other than a] or prospect well [upon the written request of the supervisor or his authorized deputy] and upon the abandonment or upon the suspension of operations conducted with respect to any well for a period of at least six months. The request shall be signed by the supervisor or the deputy and served upon such owner, operator or agent either personally or by mailing a copy of the request by [registered] certified mail to the last-known post-office address of such owner, operator or agent.

Section 26. ORS 561.265 is amended to read:

561.265. (1) The department upon not less than three days notice in writing is authorized to inspect and audit,

during regular business hours, necessary and applicable books and records of any person required by law to report or pay fees or moneys to the department. Such inspection is for the purpose of determining whether proper fees have been paid.

(2) "Fees" as used in this section includes fees due the department by a person, each month, year, or other fixed time or period, the amount of which is based upon the quantity, volume, weight or other measurement of some article, product or commodity and such fees to be used by the department in carrying out or enforcing a law under its jurisdiction. "Fees" does not include a license fee, the exact amount of which is fixed by law.

[(3) Information obtained by the department under the provisions of this section shall not be a public record.]

Section 27. ORS 573.350 is amended to read:

573.350. (1) Each person responsible for the payment of the fees required by ORS 573.340 shall file a report with the department on October 1, January 1, April 1 and July 1 of each year in which payment of the fees is required of the number of pounds of such herbicides sold, used or consumed during the three calendar months immediately preceding the date the report is due. The proper poundage fee shall be remitted with the report. The person required to file the report and pay the fee shall have a 15-day period of grace, immediately following the day the report and payment are due, to file the report and pay the fee.

(2) No user or consumer of such herbicides is required to file a report if the herbicides have been purchased from a manufacturer, jobber, broker or wholesaler who is responsible for the payment of the fee on poundage sold or from a retailer doing business in this state.

[(3)] The report required by this section shall not be a public record; however, the board or the department may prepare and publish from its records such statistics and information as it deems advisable and ^{which} will not reveal any confidential information.]

Section 28. ORS 547.120 is amended to read:

547.120. The board of supervisors immediately after its election shall choose one of its number president of the board, and elect some suitable person secretary, who may or may not be a member of the board. The board shall adopt a seal with a suitable design, and shall keep a record of all its proceedings [, which shall be open to the inspection of all owners of real estate of the district, as well as to all other interested persons]. The board shall report to the landowners at the annual meeting held under the provisions of ORS 547.110 what work has been done, either by the engineers or otherwise. Notwithstanding the provisions of ORS 198.190, if the secretary is a member of the board he shall be entitled to compensation as provided for in ORS 547.125.

Section 29. ORS 576.024 is amended to read:

576.024. (1) It is necessary for the economy of this

state, the livestock industry and the welfare of the consuming public that the department obtain statistical information for economic studies of the livestock industry including the volume of production of livestock in this state; the channels into which such livestock is marketed; the total consumption of meat in this state; the types and quantities consumed and the sources thereof; and such other information as is pertinent to reveal additional potential markets for livestock produced in this state.

(2) In order to carry out and maintain this continuing study, the department is authorized during business hours to inspect the records of places or businesses which handle, store or sell meat animals, or meat as defined in ORS 619.610. [Such data and information shall not be a public record. The department however may release or use such data or information:]

[(a) When necessary in preparation or publishing statistics as are necessary to carry out the purpose and intent of this section but which shall not reveal any confidential data or information of the identity of specific or particular places of business or establishments.]

[(b) When necessary in carrying out the responsibilities of the department under laws under its supervision and jurisdiction.]

(3) The department, after public hearing under ORS chapter 183, may require periodic reporting from the places or businesses described in this section and require the

furnishing to the department of the data or information which may be needed in continuing the comprehensive study as authorized in this section.

Section 30. ORS 576.395 is amended to read:

576.395. [(1)] The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State.

[(2) The amount of assessment moneys paid to the commission and reports or information filed with the commission by a first purchaser or producer under ORS 576.051 to 576.584 are not a public record.]

Section 31. ORS 577.826 is amended to read:

577.826. (1) After a petition is received or a written request is received from the council as authorized by ORS 577.810, all persons eligible to vote may vote in the referendum provided they register with the department their names and such other pertinent information as is required. The department shall provide a period of not less than 20 days during which such persons may register. [Only the names and addresses of the persons who register are public record.] The department thereafter shall compile and file the list of persons eligible to vote, in the Salem office of the department and may publish such list as it deems necessary for the benefit of producers.

(2) Within 60 days after the list is filed, the department shall conduct the referendum.

Section 32. ORS 578.190 is amended to read:

578.190. [(1)] The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State.

[(2) The amount of assessment moneys paid to the commission and reports or information filed with the commission by a first purchaser or grower under this chapter are not a public record.]

Section 33. ORS 579.185 is amended to read:

579.185. [(1)] The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State.

[(2) The amount of assessment moneys paid to the commission and reports or information filed with the commission by a first purchaser or grower under this chapter are not a public record.]

Section 34. ORS 128.700, 192.010, 192.020, 192.030, 240.110, 240.120, 399.220, 432.120, 432.130, 471.785, 508.545, 522.530, 522.540, 576.017, 583.464, 619.825, 656.702, 696.580, 697.220, 697.725, 721.050 and 744.017 are repealed.

Section 35. This Act being necessary ^{for the immediate preservation} ~~to preserve the~~ ^{of the public} ~~public~~ health, safety, and welfare, an emergency is declared to exist, and this Act ^{takes} ~~shall~~ take effect on July 1, 1973.

HOUSE BILL BACK

▼ CROSS OUT INAPPLICABLE WORDS ▼

RECEIVED
HOUSE DESK

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BILL
RESOLUTION } NUMBER 2157
MEMORIAL }

Title:

Relating to public disclosure by public bodies of public matters; creating new provisions; amending ORS 44.040, 59.680, 146.780, and others; repealing ORS 128.700, 192.010, 192.020, and others; and declaring an emergency.

Sponsored by Representatives

MARTIN

(At the request of the Attorney General)

ADDITIONAL SIGNERS

HOUSE

SENATE

Akeson
AuCoin
Bazett
Blumenauer
Bunn
Burrows
Byers
Cherry
Cole
Densmore
Dereli
Elliott
Eymann
Fadeley
Gilmour
Grannell
Groener
Gwinn
Hampton
Hanneman
Hansell
Ingalls
Johnson, L. *lf*
Johnson, S.
Jones
Kafoury
Katz
Kinsey
Lang
Lindquist *ed*
LA 24 HD

Macpherson *glm*
Magruder
Markham
Martin *RECH*
Marx
McCoy
Morris *POM*
Oakes
Otto
Patterson
Paulus
Peck
Perry
Priestley
Ragsdale *MR*
Rieke
Roberts
Skelton
Stevenson
Stults, D.
Stults, R. *RMS*
Sumner
Walden
Whallon
Whitehead *Www*
Whiting
Wilhelms
Willits
Wolfer, C.
Wolfer, M.

Atiyeh *W*
Boe
Browne
Burbidge
Burns, J.
Burns, K.
Carson *Wey*
Cook
Eivers
Fadeley
Groener
Hallock
Hartung
Heard
Holmstrom
Howard
Hoyt
Jernstedt
Macpherson
Mahoney
Meeker
Newbry
Ouderkirk
Potts
Ripper
Roberts *BA*
Smith
Stevenson
Thorne
Wingard

Staple

Staple

Prof Res.

H 2157 E #15
5/3/73

H 2157 E may conflict with

576.024 A

S 476 E

*Prof
Response*

Report #1

1/31/73

H 2157 *E*

may conflict with
because all three bills
amend 44.040.

S 32
H 2101

H 2157 *E*

may conflict with
because both bills repeal
697.725.

H 2115

Prof
Res.

Report #2

2/8/73

H 2157 E

may conflict with
because both amend 341.290.

H 2033 E

Report #3

2/9/73

*Prof
Res.*

H 2157 E

may conflict with
because both amend 146.780.

H 2279

Report #4

2/12/73

H 2157 E

may conflict with
because all amend 342.850.

S 43
S 269
H 2004
H 2132 E

Report #5

2/14/73

Handwritten:
2/14/73
H. 2399

H 2157 E

may conflict with
because all amend 44.040.

H 2399
S 275 E

Report #6

2/15/73

*Prot
Reef.*

H 2157 E

may conflict with
because H 2157 E repeals,
while H 2001 amends 471.785.

H 2001

H 2157 E

may conflict with
because both amend 493.090.

H 2477

L

H 2157 E
2/20/73

*Prof
Les.*

Report #7

H 2157 E

may conflict with

S 347 E
H 2799

44.040 amended by all bills.

H 2157 E
2/21/73

*Prof
Resp.*

Report #8

H 2157 E

may conflict with

S 400

44.040 amended by both.

Prof
Res

H 2157 E
2/28/73

49
H 2157 E

may conflict with

S 517

342.850 amended

H 2157 E
3/9/73

*Prof.
Rep.*

#10

H 2157 E may conflict with

H 3075

255.015 A 2157 E, 3075

*Prof
Res.*

H 2157 E
3/16/73

H 2157 E

may conflict with

S 476 E

619.825 R

*Real
Resp.*

H 2157 E #12
4/2/73

H 2157 E may conflict with

S 667

656.702 R 2157 A 667

*Prof
Resp.*

H 2157 E #13
4/17/73

H 2157 E may conflict with

341.290 A 2157, 2263

H 2263

*Prod
Rec.*

H 2157 E #14
4/25/73

H 2157 E may conflict with
341.290 A

H 3209

3-12-73 *u*
file

Statement of C. W. Hastings, Jr.
c/o The Oregon Bank
P. O. Box 3066
Portland, Oregon 97208

IN OPPOSITION TO HOUSE BILL 2157
AND SENATE BILL 15

(The term "person" as used in this statement has the meaning assigned to it by Section 2 (3) of H.B. 2157)

I am in full agreement with minimizing secrecy in the conduct of public business.

However, H.B. 2157 is rather sweeping in its elimination of confidentiality in public records; and, I believe, will have the following undesirable effects if it becomes law:

1. Because of the uncertain nature of the protection provided for confidential personal and private business information, many persons not compelled to seek the services of State agencies will refrain from doing so.
2. Persons who are for any reasons required by law or circumstances to seek the services of, or report to, a public body will have no assurance that personal or private and confidential business information will be held in confidence.
3. Much of the information contained in the files of various public bodies, particularly regulatory and investigative bodies, will be of no real public interest but will be sought by competitors, opponents, information peddlers, rumor mongers and others, even criminals, looking for something that can be turned to personal advantage.
4. The records of some public agencies contain information on the income,

worth, family, and other private affairs of persons who are not public employees or office holders or in any way involved in the conduct of public business or the expenditure of public funds, as a recipient or otherwise. This information will be protected from exposure, perhaps to hostile eyes, only by someone's subjective determination of what is in the public interest.

I call attention specifically to the Banking Division of the Commerce Department.

The files and records of this Division contain the names of many individuals and firms who are borrowers from state banks, and information concerning these borrower's financial affairs.

These files and records also contain information with respect to banks' alarms and security systems, cash and valuables storage facilities, internal operations, and insurance coverage.

They also contain information regarding private fiduciary accounts (personal and family trusts, etc.). Such information is entirely private, having to do with the personal and financial affairs of individuals and families. The Banking Division's records also contain information covering the business plans of banks - for growth, new services, and the like - to improve their respective abilities to compete.

Information of the kind above described (contained in bank examination reports and other reports and applications) is of no conceivable legitimate public interest; and could be the source of harm in the wrong hands.

The information regarding banks which is and should be of interest to the public - that concerning their financial strength and soundness - is widely available, and it is not necessary to open the files of the Banking Division to provide such information to the public.

The "Call Reports" submitted to both State and Federal banking authorities, on demand, four times each year on dates not announced in advance, are required to be published in full in publications of general circulation. Banks also make such information available to their stockholders, customers and anyone else who may be interested by means of quarterly and annual statements which are widely distributed.

I earnestly urge that H.B. 2157 be amended before passage to:

1. Provide clear, definite, full-time, mandatory protection for the confidentiality of the kinds of information mentioned in Section 11 of the Bill.
2. Include in the information protected by Section 11 at least the following:
 - (a) The private, personal, and financial affairs of any person which are not otherwise required by law to be made public.
 - (b) Security systems and storage facilities maintained by any person for the protection of money, other valuables, documents, plant and equipment, products and processes, or a home, against robbery, burglary, sabotage, industrial espionage, or other unauthorized intrusion.
 - (c) Business plans which are not otherwise required by law to be the subject of public announcement or public hearings.
 - (d) The nature and amount of insurance carried by any person against liability, robbery, burglary, theft, extortion, employee infidelity, vandalism and the like; and the amount of insurance upon the life of any person.
 - (e) Material consisting of unconfirmed opinions, estimates, speculations, suspicions, guesses, or rumors as to the activities or condition of any

person or officer or employee of any person.

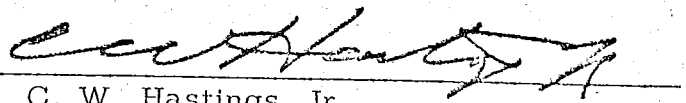
- (f) The files and records of the Banking Division, except as to such matters as are already required by law or regulation to be publicized. (These files and records contain altogether too much information that is of no interest to the public, but would be of great interest to competitors, persons seeking private advantage, criminals, and others whose use of such information is much more likely to be adverse to the public interest than conducive to it).

Further, I believe and therefore recommend that both H.B. 2157 and S.B. 15 be amended at least to provide that meetings of regulatory boards and commissions at which information of the kind above mentioned will be discussed should be permitted to be closed to the public.

Again, my interest is primarily the State Banking Board. This Board discusses many things other than regulatory policy. At its meetings the Board may consider the financial or operational problems being encountered by a bank, or the investigation of a bank officer because of suspected incompetence or failure to comply with banking laws, or other matters of similar nature.

Such a problem can almost always be corrected with the guidance or, if necessary, the direct action, of the State or Federal regulatory authorities; but premature public disclosure of the problem can result in major, irreparable (and needless) harm to the bank involved, to the detriment of its depositors, other creditors, employees, stockholders and community.

I strongly urge that House Bill 2157 and Senate Bill 15 not be approved in their present forms.


C. W. Hastings, Jr.

My name is Sandra Diedrich. I live at Rte 1 Box 1004, Bandon, Oregon. I am presenting this statement in behalf of the Oregon Committee for Progress through Law especially in behalf of the Southwest Oregon CPL. I am the chairman of the Southwest Oregon CPL encompassing Coos, Curry, and Western Douglas Counties. This statement supports SB 15 in concept but identifies areas of concern which are conspicuous by omission from the proposed bill.

The devices employed by duly constituted "legislative bodies" to impede the public right to know are many in number: non-published meetings, irregular meeting times and places, abruptly cancelled meetings without notice of time or place of reconvention, indefinite adjournments, and special mealtime sessions. Of these, the meal related meetings and meetings held in business establishments whose primary clientele are affluent work a particular hardship on less affluent but just as concerned members of the constituency. People who do not have a great deal of money cannot, of course, afford the cash value of meals prior to or during the business meeting and are self-consciously reluctant to attend meetings held in such an atmosphere. Besides that, non-meal meetings held in such establishments tend to discourage lower income people who are socially uncomfortable because of dress standards and the unfamiliar "ground".

The devices differ; the intent varies, but the results are the same, i.e., the public suffers de facto loss of sovereignty and de facto exclusion from the public process. SB 15 in its present form provides remedies for such devices except for stating that public meetings ought to occur in such a place that is readily accessible to all sectors of the constituency regardless of socio-economic status. Regular business meetings of "legislative bodies" as well as special sessions except those dealing with sensitive personnel questions, ought to take place in public places where all members of the constituency have equal access. Every community has such places which were designed, built, or made available for such purposes. These places ought to be used to provide equal access.

While SB 15 is designed to enforce the right of the people to attend meetings, it stops there. It can be construed by the language of this bill that a person may attend a meeting but does not have the right to speak to the issues to be dealt with during the meeting. In contacts and conversations I have had with various private individuals and public officials since this legislation has been introduced, this point has been raised.

One argument I have heard frequently is that conducting a business meeting with the public present and vocal is lengthy and painstaking. Such an argument deserves to be placed in the same category as that of a teacher saying that a lesson would go much faster if only the students wouldn't ask so many questions. While I appreciate the neccessity to have an orderly process for the proper conduct of business, it seems of paramount urgency that the public has the right to speak to issues directly to those with whom authority has been delegated during the course of public decision making process. Officials, whether they be elected or appointed, are invested with public trust and the responsibility to safeguard that not with omniscience or omnipotence. They ought not to forget that the information which the public may bring to their attention may result in a more informed and more equitable decision.

I would, therefore, urge that provision be made in SB 15 for an orderly process by which a member of the public may obtain both the right to appear on the agenda of a meeting given reasonable constraint and the right to speak to an issue before that meeting also given reasonable constraint. An orderly filing of intent in both cases would satisfy and safeguard both the right of the public and the orderly conduct of business. If one merely wishes to attend a meeting, then the anonymity provided for in SB 15 is in order.

SB 15 is a long step forward in reaffirming the principles of participatory democracy and the sovereignty of the people as well as their right to know. However, let not the long step forward fall short of providing all of the people with equal access and the right to speak publicly to the issues.

**LOS ANGELES TIMES' EDITOR
ON EFFECT OF SUBPOENAS
CONGRESSIONAL COMMITTEE**

William F. Thomas, editor of the Los Angeles Times, testified Feb. 27 that the paper has spent over \$200,000, most of it in the past year, to resist more than 30 subpoenas seeking to force Times reporters to reveal their news sources.

"It should be clear to anyone that small papers cannot resist at these prices," Thomas told the Senate constitutional rights subcommittee in Washington.

Under threat of court action, he said, small papers "stop printing stories that could cause them legal problems, and sources -- clearly perceiving that all this means their confidentiality rests upon an increasingly frail reed -- stop giving information to all of us."

Thomas appeared with John F. Lawrence, chief of The Times Washington bureau, and Jack Nelson, an investigative reporter in the bureau, to urge the subcommittee headed by Sen. Sam J. Ervin Jr. (D-N.C.) to write strong legislation to shield newsmen from court orders requiring them to disclose the sources of confidential information.

"There is no question in our minds," Thomas said, "that our sources are already dwindling, and that the courts are the reason."

In the absence of a shield law, Thomas said, potential sources in Los Angeles have refused information to The Times "at least four times in the past few weeks." There have been two such instances in the Washington bureau, he said.

A specific plea for legislation that would accord absolute privilege to newsmen in state as well as federal jurisdictions was made by Robert S. Warren, an attorney who has represented the Los Angeles Times in cases involving protection of sources.

The situation has reached a "crisis" stage, Warren said, because litigants "have discovered that the investigative and reporting functions of newspapers fit in handsomely with the fact-finding process involved in court proceedings."

Because of a state court decision that the state shield law does not apply to gag orders issued by courts in connection with criminal proceedings, Warren said, "our only hope of breaking the California court's rigid control over speech respecting criminal proceedings is by the enactment of effectual federal legislation."

RIVERSIDE FORMS PRESS COUNCIL

At the invitation of Howard H. Hays, Jr., editor and co-publisher of The Press and Daily Enterprise, Riverside, a citizens committee to "discuss and appraise the performance of The Press and Daily Enterprise" has been formed in Riverside. The 11-member council, a one-year experimental project, will have the following objectives as stated by Editor Hays:

Give the newspapers the benefit of its suggestions and criticism.

Give council members an opportunity to discuss the content of the newspapers with those responsible for it, promote public accountability of the press, and help standards of journalism.

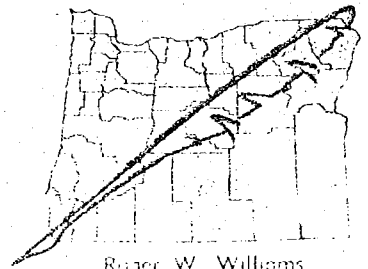
Give the readers of the newspapers another channel for their complaints about, or observations on, the newspapers.

Provide the readers of the newspapers and the community generally with periodic and independent reports on the performance of the newspapers.

PRESS TRIBULATIONS

The California Supreme Court has been asked to reverse an appellate decision lifting a

Oregon Newspaper Publishers Association, Inc.



Roger W. Williams
Secretary/Manager

TO: Joint Committee on Professional Responsibility
FROM: Roger W. Williams, Executive Secretary/Manager
Oregon Newspaper Publishers Association
DATE: March 6, 1973
RE: Proposed Shield Law, SB 206

Dear Representatives and Senators:

Since you are faced with the chore of taking a second look SB 206, I thought the enclosed photocopy of a page from a recent California Newspaper Publishers Association bulletin might be of interest. It notes the severity of this problem in California. As much as we would like to think otherwise, it is most assuredly only a matter of time before Oregon would be faced with situations such as those described.

Let me take this opportunity to thank you for reporting the bill out virtually intact the first time around. I'm sure you will give much thought to the situation before making any significant changes in this legislation.

Based upon the testimony made by newspapers during hearings, you realize the impact any changes would have on our industry. We need a strong bill, one which will afford the public the protection which is needed to assure a free-flow of information on all matters.

Best Regards,

Roger W. Williams
Secretary/Manager

RWW/ljn

encl

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0245 S. W. BANCROFT STREET, PORTLAND, OREGON 97201
TELEPHONE 221-1054

RT. REV. HAL R. GROSS
President

RICHARD N. HUGHES
Executive Director

ARTHUR E. CROUCH, JR.
Associate Director

TO: The Joint House-Senate Subcommittee on Professional Responsibilities:
Representative Robert Ingalls, Chairman; Ed Lindquist, Vice Chairman;
George Cole, Peg Dereli, Norma Paulus - Senator Jack D. Ripper, Chairman;
Wallace Carson, Vice-Chairman, Ed Fadeley, Tom Hartung, Fred W. Heard.

FROM: The Legislative Commission, Oregon Council of Churches

DATE: March 6, 1973

RE: Clergy Confidentiality - SB 32

From the Legislative Commission of the Oregon Council of Churches in session March 2, 1973. We would like to share our ideas and concerns with you regarding the clergy confidentiality bill SB 32 now in committee:

SB 32, lines 18-21, are the current ORS language covering confidentiality of clergy. We request that these lines be deleted and in their place insert these words:

A clergyman shall not be examined as to any information or communication made to him in his professional capacity, without the consent of the person who provided such information or communication.

RATIONALE:

- (a) All of the other professions currently covered by ORS 44.040 enjoy very broad coverage.
- (b) Lines 18-21 have been used in Oregon to apply only to what a Roman Catholic priest hears in his confessional. This so limits professional confidentiality that it becomes virtually useless, not only to Protestant and Jewish clergy, but also to Roman Catholic priests vis a vis marriage counseling, etc.
- (c) Many Protestant communions view confession as occurring only in two ways:
 - . Through a general, shared, spoken confession during public worship, and a concomitant opportunity for silent, personal prayers of confession. The present wording of the statute ignores this entire meaning of confession, and so automatically exempts the clergy who hold, and serve churches which hold this theology, from consideration under this statute.
- (d) The professional functioning of all clergy in this day and age spans a very wide scope of involvement and engagement. We very much need a general confidentiality clause that reflects the realities of our responsibilities.

Thank you very much for your consideration!

LEE JOHNSON
ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

STATE OFFICE BUILDING
SALEM, OREGON 97310

TELEPHONE: (503) 378-4400

March 5, 1973

Mr. Myer Avedovech
City Attorney
City Hall, 926 Main Street
Milwaukie, Oregon

Dear Myer:

Representative Roger Martin has asked that I answer your letter of February 20. Taking each of your question in their order:

1) Will the city attorney continue to enjoy an attorney-client privilege between himself and the city council, an elected body, and/or city manager and department heads who are not elected but appointed or civil service appointments?

A) The attorney-client privilege is somewhat anomalous when applied to government agencies. In the first place, I know of no privilege for communications from the attorney to his client. A common law attorney-client privilege only refers to those communications from the client to the attorney. The purpose of the privilege is to protect private persons so that they can feel free to spill their guts to their lawyer and the conversation will remain inviolate. I am not certain that the same principle applies when you are talking about governmental agencies. Certainly the advice of the attorney to a governmental agency should be public record. Indeed under ORS Chapter 180 I am required to publish all of my opinions. I would think that the protection provided by Section 11(2)(b) should be sufficient.

2) What of memoranda which are daily products of the attorney's office which go to various department heads -- are these to become public records and reviewable at the request of any citizen?

A) The same principles apply. It is our opinion that the protections provided by paragraph 11, 1(a)(b)(c)(d)(f)(i) and (m) are sufficient to protect any needed confidentiality.

Mr. Myer Avedovech
March 5, 1973
Page two

3) What about daily correspondence, such as this letter I am currently addressing to you, or other letters which I would write in the normal course of my duties?

A) See question number 2.

4) Realizing there is a provision regarding litigation, would it be possible under this to have a discussion in private with the city council regarding the pros and cons of proceeding with litigation, defending litigation, indicating the legal position of the city, its weak points, without fear of having newspaper reporters or the general public demanding to sit in on these types of sessions?

A) Under the present provision of Section 12 of the bill, this type of discussion with the City Council would have to be held in public. I recognize that there may be some risks involved. However, this office continually carries this kind of conversation on with agencies in a public atmosphere and has not felt that any disadvantage resulted. Under modern discovery rules, the opposing party is usually in a position to pretty well diagnose your weaknesses and strengths.

5) What about informal opinions, oral or written, given to department heads and or the city council, must these be done publicly and made available to the public for their inspection?

A) Such opinions would be subject to public disclosure except as covered by Section 11 2(a).

6) Does the intent of this bill go to dictate the location of all meetings of the council? What is meant by this is our council has precouncil meetings to discuss items on the agenda, get last-minute handout material from staff regarding items, ask any questions anybody has about the agenda or what is going to happen during the evening. No decisions are made, and no great-length discussion held. The meetings are open to the public and the press if they so wish, but are usually held in the city manager's office, which would probably not accommodate more than four or five additional people in addition to the council. We always maintain the option that if a lot of people show up for a precouncil meeting, of going upstairs to our city council chambers. Must we hold all meetings in our city council chambers?

A) I do not believe that Section 12 is designed to dictate the place the City Council meetings are to be held. The spirit of the law is to encourage public meetings. One of the abuses that it is directly aimed at is the so-called pre-council meeting regardless of its purpose.

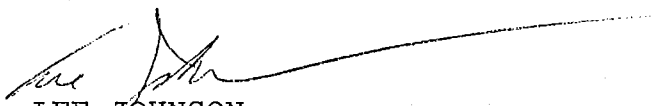
Mr. Myer Avedovech
March 5, 1973
Page three

7) Under Section 12, subsection (5) states: "When private communications among or staff communications with the members of a governing body substantially form the basis for a decision, the substance of such communications shall be disclosed at public meetings." Does this mean that only the general nature of the memorandum submitted by staff to the council or governing body is available in an oral statement from the council, or must that memorandum be produced for inspection if requested?

A) We agree with you that the quoted language will be difficult to enforce. As I stated in my testimony before the committee, Section 12 as a whole will be difficult to enforce. Rather it is a statement of public policy and will be up to governmental bodies to decide whether they are going to comply with the spirit of that policy. As to memorandums, while it may not be necessary that they be disclosed under Section 12(5), it would seem that they are clearly public records under Section 1-11.

If I can answer any further questions, please advise.

Yours very truly,



LEE JOHNSON
Attorney General

LJ:bjm

cc: Representative Roger Martin
Professional Responsibility Committee Members

HOME ADDRESS
ANTHONY "TONY" MEEKER
110 ROSEDALE
AMITY, OREGON 97101



MAR 5

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COMMITTEES
Agriculture and
NATURAL RESOURCES
LABOR
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URBAN AFFAIRS

OREGON STATE SENATE
SALEM, OREGON
97310

March 2, 1973

MEMO TO: Rep. Robert Ingalls
FROM: Tony Meeker

Enclosed please find my proposed amendments to Senate Bill 206, the Shield Law. The amendment simply excepts any candidate or political committee organized under ORS Chapter 260 from the provisions of Senate Bill 206.

AM:vl
Encl.

P.12

February 28, 1973

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 206

On page 3 of the printed engrossed bill, line 11, after "apply" insert a colon and start a new paragraph and insert "(1)".

In line 14, after "information" delete the period and insert "; or".

After line 14, insert:

"(2) To any disclosure required by the provisions of ORS chapter 260.".